



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITUI

CRIMINAL REVISION CASE NO. 321 OF 2018

MUINDE WAMBUA WUMO.....1ST APPLICANT

DENNIS KITIVO MBUVI.....2ND APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

R U L I N G

1. This file was placed before the Court for Revision pursuant to the provisions of **Section 362** of the **Criminal Procedure Code**. It is my duty to satisfy myself of the propriety of the sentence passed.

2. The offender herein, **Muinde Wambua Wumo**, was arraigned in Court to answer charges of **House Breaking** contrary to **Section 304(1)(b)** and **Stealing** contrary to **Section 279(b)** of the **Penal Code**. Having admitted the charges, he was convicted and sentenced thus:

1st Limb – To serve **one (1) year imprisonment**.

2nd Limb – To serve **1½ years imprisonment**.

Sentences to run consecutively.

3. **Section 14** of the **Criminal Procedure Code** provides thus:

“(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefor which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

4. In the case of **Peter Mbugua Kabui vs. Republic (2016) eKLR** the Court of Appeal stated thus:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment. It is our considered view that the exception in Section 14 (3) of the Criminal Procedure Code is inapplicable to this case in light of the provisions of Section 7 (1) of the Criminal Procedure Code. We further observe that Section 14 of the Criminal Procedure Code stipulates that for purposes of an appeal, the aggregate of consecutive sentences imposed in case of convictions for several offences at one trial, shall be deemed to be a single sentence. We take the view that given the circumstances of this case, the consecutive sentences totaling 20 years imposed on the appellant, cannot said to be excessive. In any event, as we have pointed out earlier, severity of sentence is a question of fact and this Court has no jurisdiction to consider issues of fact in a second appeal. Is the sentence illegal or unlawful” We find that the sentence was legal and lawful, and we have no legal basis for interfering with the same.”

5. It is apparent that the offences herein were committed in a single act/transaction. In that regard I do set aside the consecutive sentences as ordered by the trial Court and substitute the same with the following order:

1st Limb of the Charge – To serve one (1) year imprisonment.

2nd Limb of the Charge – To serve one (1) year imprisonment.

Sentences to run concurrently.

6. Further, I do note that the offender was jointly charged with another who denied the charges. I direct that the Lower Court file be placed before the Chief Magistrate for purposes of proceeding with the hearing against the 2nd Accused (**Dennis Kitivo Mbuvi**). Mention on the **17th July, 2019**.

7. It is so ordered.

Dated, Signed and Delivered at Kitui this 4th day of July, 2019.

L. N. MUTENDE

JUDGE