

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.487 OF 2017

JAMES KEGOCHA MAGIGE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, James Kegocha Magige, with others, was charged with theft of several motor vehicles contrary to **Section 278A** of the **Penal Code**. The value of motor vehicles was Kshs.17 million. After full trial, the Applicant was convicted and sentenced to serve four (4) years imprisonment. He was sentenced on 18th April 2017. This was in **Criminal Case No.344 of 2013 (Milimani)**. The Applicant had earlier been convicted of a similar offence of **stealing a motor vehicle** contrary to **Section 278A** of the **Penal Code**. He was sentenced to serve a custodial sentence. This was in **Criminal Case No.305 of 2016 (Milimani)**. It is the Applicant's plea that the two custodial sentences imposed in the two separate cases be consolidated. The Applicant explained that he would suffer prejudice if the two sentences were not consolidated. He has been in lawful custody since 2nd February 2016. He was a first offender. He had reformed and had learnt his lesson in the period that he has been in prison. He pleaded with the court to exercise leniency and mercy on him.

Ms. Kimiri for the State opposed the application for consolidation of sentence. She submitted that upon being released on bail pending trial on the first charge, the Applicant committed a similar offence within months of his release. She stated that the Applicant was not a person who appears to be remorseful nor is he a person who will not likely commit another offence if he is released. She urged the court not to interfere with the sentences imposed by the trial court.

This court has carefully considered the facts of this case. When the Applicant was sentenced by the trial court, that court was exercising judicial discretion. This court can only interfere with such sentence if it is established that the sentence was either harsh or extremely lenient as to constitute miscarriage of justice. This court can also interfere with the exercise of such sentencing discretion if it is established that the trial court applied the wrong principles of the law in sentencing the Applicant. In the present application, it was clear to this court that the trial court correctly exercised its discretion when it sentenced the Applicant. The trial court took, *inter alia*, the value of the property that the complainant lost. This court cannot consolidate the two custodial sentences that was imposed upon the Applicant because the Applicant committed another similar offence during the pendency of the first trial in the other offence. It is clear that the Applicant is a repeat offender who should be kept away from society for as long as the law allows.

In the premises therefore, the Applicant's application for consolidation of sentences lacks merit and is hereby dismissed. It is so ordered.

DATED AT NAIROBI THIS 6TH DAY OF FEBRUARY 2018

L. KIMARU

JUDGE