



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

MISC. CR. APPLN NO 11 OF 2018

FREDRICK MUTEMBEI KALUMA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. FREDRICK MUTEMBEI KALUMA (“the applicant”) has, by his Motion on notice dated 15th February, 2018, applied for revision of sentences metted on him in Criminal Case No’s 255, 302, and 306 of 2016 on 14th October 2016 by Hon. R.G Mundia, PM at Isiolo Principal Magistrates Courts.

2. The grounds upon which the application is made are set out in the body of the Motion and in his supporting affidavit sworn on 15th February, 2018. These are that; the applicant was sentenced to serve fifteen (15) years imprisonment, for the offences of ;

a) Breaking and stealing c/sec 304(1) (a) in **criminal case No. 255 of 2016** where he was sentenced to serve five (5) years imprisonment.

b) Stealing from a locked motor vehicle c/sec 279 (g) in **criminal case No. 302 of 2016** where he was sentenced to serve seven (7) years imprisonment.

c) Burglary c/sec 304 (2) in **criminal case No. 306 of 2016** wherein sentenced to serve three (3) years imprisonment.

3. The applicant is now serving the sentences which are running consecutively. The applicant thus prays that his application be allowed and consequently the sentences be ordered to run concurrently with an option of a fine.

4. The applicant pleaded guilty to each of the charges whereby he was convicted according.

5. Section 14 of the Criminal Procedure Code Cap 75 of the Laws of Kenya provides:

“(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.

6. In the case of **Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97**, the Court of Appeal for Eastern Africa held that the general rule is that where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, to impose concurrent sentences. That is still good practice.

7. Similarly, in **Ng'ang'a – v- R, (1981) KLR 530** and **Ondiek – v- R (1981) KLR 430**, the Court held that the practice is that if a person commits more than one offence at the same time in the same transaction save in exceptional circumstances, the sentences imposed ought to run concurrently.

8. If an accused 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.

9. In the present case, the offences were committed on diverse dates, at different places and perpetrated against different complainants. In this regard, the trial court did not err in ordering the sentences to run consecutively.

10. As regards the fine option, the sections of the law under which the applicant was convicted, to wit **section 394 (1), 279 (g) and 304 (2) of the Penal Code Cap 63 of the Laws of Kenya**, respectively; all provide for a minimum sentence of imprisonment. They do not have any option for a fine. Accordingly, in light of the proviso under section 26 (3) of the Penal Code, a fine shall not be substituted for imprisonment.

11. In any event, this is not a proper case for review since the applicant has already preferred an appeal against his conviction. The original records may be returned.

12. In the premises, I find the application to be devoid of merit and the same is hereby dismissed.

DATED and DELIVERED at Meru this 20th day of September, 2018

A. MABEYA

JUDGE