



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CORAM: MAJANJA J.

CRIMINAL APPEAL NO. 62 OF 2018

MATHIAS ORARE MASOLE.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

(Appeal from the original conviction and sentence of Hon. S.N Makila – RM

dated 13th July 2018 at the Chief Magistrate’s Court at Kisii

in Criminal Case No. 192 of 2016)

JUDGMENT

1. The appellant, MATHIAS ORARE MASOLE, was charged with two counts with his co-accused for assaulting a police officer contrary to section 103 of the National Police Service Act, 2011. The particulars were as follows:

(1) On the 13th day of January 2016 at Kiogoro Village in Kisii Central Sub-County within Kisii County, jointly with others not before court, unlawfully assaulted No. 79020598 AP Senior Sergeant Mogaka Mokuia thereby occasioning him actual bodily harm.

(2) On the 13th day of January 2016 at Kiogoro Village in Kisii South Sub-County within Kisii County, jointly with others not before court, willfully obstructed No. 79020598 AP Senior Sergeant Mogaka Mokuia, No. 99015327 AP Corporal Calleb Ochieng’ and No. 2013031073 APC Ryne Adhiambo from effecting the arrest of changaa brewer.

2. The appellant and his co-accused were duly convicted on both counts and sentenced to three (3) years imprisonment to run consecutively.

3. At the hearing of this appeal, the appellant prayed for leniency and sought for the sentence to be revised. Counsel for the respondent concedes that there is an error in the sentence as the evidence shows that the incident was part of the same transactions.

4. I agree with the concession. The subordinate court was entitled to pass consecutive sentences but the record does not show why the consecutive sentences were imposed. The incident was part of the same transaction as the accused were said to be preventing police officers from arresting a suspect.

5. The **Sentencing Policy Guidelines** provide for imposition of concurrent and consecutive sentences as follows:

7.13 Where the offences emanate from a single transaction, the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentence should run consecutively.

7.14 The discretion to impose concurrent or consecutive sentences lies in the court.

6. This **Guideline** is supported by several authorities among them **SawediMukasa s/o Abdulla Aligwaisav R[1946] 13 EACA 97** and **Peter MbuguaKabui v Republic NRB CA Criminal Appeal No. 66 of 2015[2016]eKLR**.

7. I accordingly allow the appeal and substitute the sentence with an order that the sentences on both counts to run concurrently.

Dated and delivered at Kisii this 12th day of October, 2018.

D.S MAJANJA

JUDGE

Mr. Otieno, Senior Prosecution Counsel, instructed by Office of Director of Prosecutions for the respondent.

Appellant in person.