



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NANYUKI**  
**CRIMINAL APPEAL NO. 98 OF 2016**

**KIMANI LELERUK ..... APPELLANT**

*Versus*

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence in*

*Maralal Principal Magistrate's Court Criminal Case No. 617 of 2015*

*by Hon. C N Ndegwa – Principal Magistrate on 8<sup>th</sup> March  
2016 )*

**JUDGMENT**

1. **KIMANI LELERUK** was charged and convicted before the Principal Magistrate's Court at Maralal for the **offences of Causing grievous harm Contrary to Section 234 of the Penal Code Cap 63**, and the **offence of being in illegal possession of firearm Contrary to Section 89 (1) of Cap 63** on the **second count**, and being in illegal possession of ammunition **Contrary to Section 89 (1) of Cap 63 on count three**. The trial court sentenced Kimani on all Counts to 7 years respectively. All those sentences were to run consecutively.
2. Kimani was aggrieved by the conviction and sentence but at the hearing of his appeal he abandoned his appeal against conviction and proceeded with his appeal against sentence.
3. Kimani by his written submissions requested the court to reduce his sentence and to give him a second chance in life; he submitted that he had reformed and would not be a repeat offender; and that he is married and that his single mother relies on him.
4. In his oral submissions before court he requested that this court does order his sentences to run concurrently.
5. Learned Principal Prosecution Counsel Mr Tanui submitted that the 7 years on each count was commensurative of the offences. He however submitted that the three counts were of the same transaction and the sentence thereof should have run concurrently.
6. The prosecution's case was that Kimani shot the complainant on both legs while she gathered firewood. The complainant was taken to hospital and Kimani was arrested while in possession of an AK47 firearm and ammunition. Evidence was tendered that the shots to the complainant were from the firearm found with Kimani. It follows from that narration that the counts were of the same transaction. As correctly submitted by Mr Tanui the sentences of the three counts ought to have run concurrently.

7. The court of appeal in the case, **PETER MBUGUA KABUI – V- REPUBLIC [2016] eKLR** held that:

*“In the case of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97, the then Court of Appeal for Eastern Africa in a judgment read by Sir, Joseph Sheridan stated that the practice is 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.*

*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.”*

8. It follows that the correct sentence that the trial should have meted out was concurrent sentence. The 7 years sentence however do not attract interference of this court. **This court orders that the appellant’s sentence by the trial court of 7 years on each of the three counts shall run concurrently. To that extent appellant’s appeal succeeds.**

9. It is so ordered.

**DATED AND DELIVERED THIS 7<sup>th</sup> DAY OF JUNE 2017**

**MARY KASANGO**

**JUDGE**

**CORAM:**

Before Justice Mary Kasango

Court Assistant – Njue/Mariastella

Appellant: Kimani Leleruk .....

For the State: .....

Language .....

**COURT**

Judgment delivered in open court.

**MARY KASANGO**

**JUDGE**