

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CR. APPLICATION NO. 34 OF 2013

MATTHEW MATHEKA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant filed the instant application on 4th February, 2013 being a Chamber Summons seeking orders for consolidation of sentences and review of the same in respect of three criminal cases in which he was convicted. The three cases are **Thika Cr. Case No. 1943 of 2007** in which was charged with twelve counts; six of which were of the offence of personation contrary to **Section 382 (1) of the Penal Code** and six with the offence of obtaining money by false pretenses contrary to **Section 313 of the Penal Code**. He was sentence to pay a fine of Kshs. 20,000/= in respect of each of the counts in default serve one year imprisonment. The sentences were to run consecutively if he did not pay the fines. The sentences were passed on 25th February, 2010. The other case was **Thika Cr. Case No. 1945 of 2007**. He faced five counts of personation contrary to **Section 382(1) of the Penal Code** and five counts of obtaining money by false pretenses contrary to Section 313 of the Penal Code. He was also convicted in all the counts and sentenced to pay a fine of Kshs. 20,000/= in default serve one year imprisonment in each count. Sentences were to run consecutively. They were passed on 29th April, 2010. The third case was **Thika Cr. Case No. 1942 of 2007**. He was charged with 12 counts of obtaining money by false pretenses. He was convicted and sentenced to serve five years imprisonment in respect of each of the counts on 27th April, 2010. Sentences were to run concurrently. He has since completed the sentence in this case.

The Applicant therefore requested that the court either consolidates the sentences in **Criminal Case Nos. 1943 and 1945 of 2007** or in the alternative finds that he has served sufficient sentence and sets him free. With respect to request for consolidation, the same is impracticable because the Applicant was charged in separate cases for different offences which were separately punished. It is legally unprocedural to consolidate sentences for different cases. On the revision of sentences, in both cases, the Applicant was convicted in the year 2010. **Cr. Case No. 1943 of 2007** had twelve counts which means that he is required to serve twelve years imprisonment. He has since the date of the judgment served seven years imprisonment. The same case applies to **Cr. Case No. 1945 of 2007** although the same had ten counts.

I emphasize that a sentence shoulders a major purpose of reforming the offender. It is not aimed at hardening the offender. Punishment must also be commensurate with the offence. The court must also look at the character of the offender, the value of the subject matter in the case and the prevalence of the offence. Of course the three cases ran parallel to each other. And so the Applicant cannot claim to have been a first offender. The appellant appears to have formed a habit of committing similar offences. However, when I look at the value of the subject matter, the amounts obtained were not so large as to necessitate the Applicant to stay in prison for a period longer than he has already served. It is my view that the seven years he has remained in prison will reform him to be a better and a responsible citizen. I accordingly find that he has served sufficient sentence. I set aside the balance of the imprisonment terms and substitute them with an order that be forthwith set free in respect of both **Cr. Case Nos. 1943 of 2007** and **1945 of 2007** unless he is otherwise lawfully held. It is so ordered.

Dated and Delivered at Nairobi This 15th Day of June, 2017

G.W. NGENYE-MACHARIA

JUDGE

In the presence of;

- 1. Applicant present in person.*
- 2. Ms. Kimiri for the Respondent.*