



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

H.C.CR.A 76 OF 2013

ALEX INAHI VUGUSUAPPELLANT

VERSUS

REPUBLICRESPONDENT

(Being an appeal from the original conviction and Sentence of the Chief Magistrate's Court at Machakos by Hon. E.K. Too (Ag. SRM)) in Criminal Case No. 105 of 2013 dated 26th February 2013)

(Before E. Ogola J)

JUDGMENT OF THE COURT

1. The Appellant, **Alex Inahi Vugusu**, was charged with the offence of **Shop Breaking** and **Committing a Felony** contrary to **Section 300 (a)** of the **Penal Code**. The Appellant was convicted on his own plea of guilty to serve 4 years imprisonment on each of the three counts to run consecutively.
2. Being not satisfied with the sentencing to run consecutively, the Appellant has filed this appeal arguing the following grounds:-
 - i. **That the offences in question were committed by the same persons, at the same time and at the same locus in quo.**
 - ii. **That the offences are related in nature and substance.**
 - iii. **That the offences were prosecuted under the same file number, in the same court, at the same time and by the same magistrate.**
3. The Appellant also submitted that he has mitigating factors including the fact that he pleaded guilty to the charges and that he is a first offender, with wife, children and an elderly mother to take care of.
4. The Appellant is remorseful and undertakes not to engage in any criminal activities in future. The Appellant accordingly asks that his sentences do run concurrently and to take effect from the original pronouncement date.
5. The State does not oppose the appeal for the sentences to run concurrently.

6. I have considered the appeal.

7. **Section 12** of the **Criminal Procedure Code Cap 75** states that:- *“any court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass”*. The magistrates have discretion on the type of sentence depending on the length of sentence, nature of the offence, the records of the accused, demeanor of the accused to say the least. The sentence ought to be lawful and not excessive.

8. It is trite law that in cases where a person has been charged and convicted of two or more counts involving the same transaction in charge sheet or information or a trial, the practice is to direct that the sentence runs concurrently. One would argue that the Complainants are different, but the offence is similar and committed at the same date, may be time is what differed. The transaction is the same and offence the same.

9. This court finds that the appeal is merited. The sentences pronounced herein by the trial court shall run concurrently from the date of the judgment in the trial court.

That is the judgment of the court.

Dated and delivered at Machakos this 4TH day of OCTOBER, 2016.

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E. OGOLA

JUDGE

In the presence of;

Mr. Machogu for State

Court Assistant - Mr. Munyao