



No. 304/2014

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

CRIMINAL REVISION NO. 9 OF 2014

KALPESH DEVANI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING ON REVISION

1. By a letter dated 22nd April, 2014, the firm of **W.J. Ithondeka & Co.** has moved this court to revise the sentence passed in **Machakos Criminal Case Number 1139 of 2012, Republic versus Kalpesh Devani** pursuant to the provisions of **Sections 362 and 364 (2)** of the **Criminal Procedure Code**.

2. The applicant was charged with three(3) counts;-

- i. Forgery contrary to **Section 345** as read with **Section 349** of the **Penal Code**.
- ii. Uttering a false document contrary to **Section 353** of the **Penal Code**.
- iii. Attempt to steal contrary to **section 268(1)** as read with **Section 389** of the **Penal Code**.

3. Initially he pleaded “*not guilty*”. Thereafter he changed plea and admitted all the three (3) counts. He was convicted and sentenced as follows:-

Count 1– Two (2) years and six (6) months imprisonment.

Count 2 – Two (2) years and six (6) months imprisonment.

Count 3 – One (1) year imprisonment.

An order was made for the sentences to run consecutively.

It is the contention of the applicant that sentences should run concurrently.

4. A perusal of the Court record shows that the applicant was charged with three (3) offences that were committed on the same day, at the same time and in the same transaction. In the case of **Elias Abdi Osman versus Republic [2006]** the Court stated that :-

“It has been repeatedly said that where a person commits more than one offence at the same time and in the same transaction, concurrent sentences of imprisonment should be imposed....in the instance case, the complainants were assaulted by the

appellant at the same time and at the same locus in quo. Accordingly the learned magistrate in sentencing the appellant on each count ought to have ordered that sentences imposed do run concurrently” (see Republic versus Mukasa [1945] 12 EACA 97).

5. Similarly, in the case of ***Musa s/o Bakari vesus Republic [1968] HCR (Tanzania) No. 2391*** it was stated that concurrent sentences are exclusively awarded for related offences.

6. From the foregoing it is apparent that the trial magistrate erred in ordering the sentences to run consecutively.

7. I have also been asked to act pursuant to **Section 333(2)** of the **Criminal Procedure Code** by directing that the sentences to run from the time the order was made, the **11th October, 2012**. It is alleged that at the time of his conviction, the applicant was serving sentences having been convicted in **Criminal Case No. 1434 of 2012**. The duty of proving existence of the case was upon the applicant who did assert the same. Other than mere assertion, he did not tender anything whatsoever to establish his allegation. I therefore decline to delve into an issue which has no basis.

8. Consequently, I do set aside the order made in respect of sentences to run consecutively and substitute it with an order that the sentences shall run concurrently.

9. It is so ordered.

DATED, SIGNED and DELIVERED At MACHAKOS this 5TH day of JUNE, 2014

L.N. MUTENDE

JUDGE