



**REPUBLIC OF KENYA**

**High Court at Nairobi (Nairobi Law Courts)**

**Criminal Revision 419 of 2012**

FREDRICK OGUTU ..... APPLICANT

VERSUS

REPUBLIC ..... RESPONDENT

**RULING**

The applicant was charged and convicted of three offences. In count I he was convicted of the offence of stealing contrary to Section 275 of the Penal Code. The particulars alleged that he jointly with others stole one cheque leaf valued at Kshs. 100/= the property of Bob Dewar Publicity. In count II he was charged with the offence of forgery contrary to Section 349 of the Penal Code. It was alleged that he together with others not before the court, with intent to defraud forged the cheque in count 1 for Kshs. 120,000/= purporting it to be a good and valid order for payment issued by Bob Dewar Publicity. In count III he was charged with the offence of attempting to steal contrary to Section 275 as read with Section 389 of the Penal Code. It was alleged that he jointly with others not before the court attempted to steal Kshs. 120,000/= the property of Standard Chartered Bank, Moi Avenue Nairobi.

He was found guilty on all the three counts and sentenced to two years imprisonment in count I, two years imprisonment in count II and one year imprisonment in count III. Sentences in respect of counts I and II were ordered to run consecutively, while that in respect of count III was ordered to run concurrently with those in counts I and II. In effect, the appellant was to serve four years imprisonment. He has now lodged this application asking for a review of the said sentences which has not been opposed by the learned counsel for the Republic.

I have looked at the record before me and noted that the complainant was the employer of the applicant. There is no doubt that, had the applicant succeeded in his scheme he would have defrauded his employer thereby abusing the trust bestowed upon him.

On the other hand, I note that he was a first offender and that the complainant did not lose anything in this transaction. If anything, the biggest loser is the applicant herein because, as a result of his misguided actions he has lost his employment and so far has served about 9 months imprisonment. The offences in counts I and II were committed in the same transaction and therefore the learned trial magistrate ought to have ordered the terms of imprisonment to run concurrently. With respect therefore, I agree with learned counsel for the Republic that, that should have been the order of the learned trial magistrate. Accordingly, I set aside the order of the learned trial magistrate and in place thereof order that the sentences in counts I and II shall run concurrently. Having ordered that the sentence in count III should run concurrently with those in counts I and II, the end result is that the total term of imprisonment adds up to two years.

In addition to the foregoing, I invoke the provisions of Section 15 (1) of the Criminal Procedure Code and order that the sentence of two years shall be suspended such that the applicant shall be released forthwith unless otherwise lawfully held.

The applicant is hereby informed that if he is convicted of any offence during the next two years the sentence in these offences shall take effect. In that case, the sentence passed for that subsequent offence shall run consecutively to the sentence passed for the first offence.

Orders accordingly.

**SIGNED DATED and DELIVERED in open court this 4<sup>th</sup> day of April, 2013.**

**A. MBOGHOLI MSAGHA**

**JUDGE**