

REPUBLIC OF KENYA
IN THE HIGH COURT
AT NAIROBI
MILIMANI LAW COURTS
Criminal Appeal 419 of 2008

BERNARD WAMBUA NZUKI APPELLANT

VERSUS

REPUBLIC RESPONDENT

JUDGMENT

The appellant was convicted of three counts of uttering a false document contrary to Section 353 of the Penal Code and one of forgery contrary to Section 349 of the Penal code. On each of the four offences he was sentenced to serve 2 years imprisonment, the sentences of which were ordered to run consecutively. He was dissatisfied with the said conviction and sentence and lodged this appeal against the conviction and sentence.

At the hearing of this appeal he abandoned his appeal on conviction and elected to address the court on the issue of sentence alone. The learned counsel for the Republic concedes that the appellant 's terms of imprisonment may be ordered to run concurrently in view of the fact that the offences were committed in once transaction and the appellant was a first offender. I have also looked at the record before me and noted that the central document involved, that is, title No. LR No. 7785/3 No. IR 34303 features in all the counts aforesaid.

There was also no financial benefit that was bestowed upon the appellant in respect of the said offences. With respect, I agree that the sentences should have been ordered to run concurrently. Accordingly the appeal against conviction is hereby dismissed but the appeal against sentence is hereby allowed by setting aside the order of the learned trial magistrate ordering the sentences to run consecutively and in place thereof order that the sentences shall ran concurrently.

I note that the appellant was sentenced on 18th January, 2010 in which case, as of today ,following the order above he has served the sentence so ordered. Accordingly, he shall be released forwith unless otherwise lawfully held

Orders accordingly.

Dated, signed and delivered at Nairobi this 4th day of July, 2012.

A. MBOGHOLI MSAGHA

JUDGE