

REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAKURU

CORAM: COCKAR, C.J., SHAH & LAKHA, JJ.A.

CRIMINAL APPEAL NO. 44 OF 1994

BETWEEN

CHARLES ANDIKA ZACHARIA APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal from conviction & sentence of the High Court of Kenya
at Eldoret (Aganyanya J) dated 20th August, 1993

in

H.C.CR.A. NO. 72 OF 1993)

JUDGMENT OF THE COURT

This is a second appeal against sentence. Appellant was charged on 3 counts in respect of robberies which were committed on three different dates in the same month that is, 9th, 19th and 25th - 26th January, 1993. He pleaded guilty on 17.2.93 to the last two counts and was sentenced to 6 years imprisonment with 2 strokes on each count. Prison sentences were ordered to run concurrently. On 4.3.93 his trial on the 3rd count was to commence before a different magistrate.

Before the trial commenced he pleaded guilty to the 3rd count and was sentenced to 6 years imprisonment with 2 strokes. No second appeal lies to the Court of Appeal against sentence - S. 361 (1) (a), unless the sentence has been enhanced by the High Court. However, if the sentence that was imposed is unlawful or based on wrong principles the Court of Appeal will interfere.

In this case the second magistrate was aware of the fact that the appellant had already been sentenced to six years imprisonment with 2 strokes on two counts to run concurrently.

He decided not to make the sentence run on the 3rd concurrent to the sentences that had been imposed by the other court. He was also aware of all the facts including that the appellant had committed three robberies on three different dates in the same month. In these circumstances, if the magistrate thought it fit for the sentence on the 3rd count to run consecutive to the sentences on the first two counts then, in our view, he has not erred in principle. We do not think that there is anything in the circumstances of this appeal that can call for an interference in the sentence by us. The appeal is therefore dismissed.

Dated and delivered at Nairobi this 22nd day of September, 1997.

A. M. COCKAR -----

CHIEF JUSTICE

A. B. SHAH -----

JUDGE OF APPEAL

A. A. LAKHA -----

JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR