



IN THE COURT OF APPEAL OF KENYA

AT ELDORET

CRIMINAL APPEAL 127 OF 2009

STANLEY MAOCHA MAIRURA.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Appeal from a judgment of the High Court of Kenya at Eldoret (Mwilu, J) dated 5th March, 2009

in

H.C.CR.A. NO. 120 OF 2007)

JUDGMENT OF THE COURT

The appeal of STANLEY MAOCHA MAIRURA, alias Tom Omurwa Makori, the appellant herein, is only on the legality of the sentences imposed on him, first by the Senior Resident Magistrate at Kapsabet, and subsequently by the High Court (*Mwilu, J*) on the first appeal to that court. On 26th July, 2006, the appellant appeared before the magistrate and denied a total of twelve counts under the Penal Code. Counts 1 and 9 charged him with personation contrary to *Section 382* of the Code. Counts 2 and 10 concerned making a false document contrary to *Section 347* of the Code. Counts 3, 5, 7, 11 and 12 concerned uttering of false documents contrary to *Section 353* of the Code. Finally, counts 4,6 and 12 were about obtaining money by false pretences contrary to *Section 389* of the Code. At first, the appellant pleaded not guilty to all the charges, but on 15th November, 2007, he indicated to the trial magistrate that he wished to change his plea and admit all the charges. The matter was adjourned on that day and on another day thereafter but on 21st November, 2007, the appellant changed his plea and admitted all the twelve counts. The facts upon which the Republic relied as constituting the offences were then narrated to the court but the prosecutor did not have with him the documents upon which he was relying.

The matter was adjourned and resumed on 23rd November, 2007 when the documents were produced. The documents consisted of Pass Books issued by the Post Bank Ltd at Kitale and Nandi Hills branches, a photocopy of the appellant's Identity Card and an exhibit memo form. The appellant was then asked if he agreed with the facts set out by the prosecutor. He did admit the facts. The magistrate then recorded a plea of guilty for the appellant on all the twelve counts. The magistrate however, failed to record a conviction on any of the counts though she proceeded to sentence the appellant on each one of them. On

first appeal which was solely on sentence, the learned Judge failed to correct the error by the magistrate, though the Judge also proceeded to impose her own sentences. The appeal before us being only on sentence and the charges brought against the appellant having been conclusively proved by the facts which the appellant unequivocally admitted, we now correct the error of law made by the two courts below by entering a conviction against the appellant on each of the twelve counts.

For her part the trial magistrate had sentenced the appellant in these terms:-

“The accused person is hereby fined Kshs.20,000/= on each count he shall serve three years imprisonment on each count.”

We understand this sentence of the magistrate to mean that the appellant was to pay a total fine of Shs.240,000/= on all the twelve counts and if he failed to pay the fine, he would serve a total of thirty six years imprisonment.

For her part, the learned Judge delivered herself as follows:-

“This court, exercising its powers under S354 (b) of the Criminal Procedure Code Cap 75 of the Laws of Kenya orders that the appellant do serve imprisonment for a term of three years each on count numbers 4,6,8 and 12 and the sentences do run concurrently. On counts numbers 3,5,7 and 11 the appellant will serve three years on each count and the sentences to run concurrently. On counts number 2 and 10 the appellant will serve three years on each count to run concurrently. On count numbers 1 and 9 the appellant will serve two years on each count and the sentences to run concurrently. The appellant will, therefore, serve a term of imprisonment of thirteen years and the sentences will run from 23rd November, 2007 when he was convicted and sentenced by the magistrate.”

When the appeal was being urged before us, we asked *Mr. Omutelema*, the Senior Principal State Counsel, if he could enlighten us on how the thirteen years was arrived at. *Mr. Omutelema* proved no wiser than us. We shall not try to delve into that issue as we do not think we shall be able to fathom it. Of course, we are aware that the offences involved in the appeal cannot be said to have been committed in one transaction. They were not. But the offences were all of a similar nature though committed at different times and at times in different places. *Mr. Omutelema* did accept that it does not necessarily follow that because a series of offences are not committed in one transaction, concurrent sentences cannot be imposed. *Section 14(1)* of the Criminal Procedure Code confers on a trial court the discretion to order that the sentences run concurrently. Accordingly we order that all the sentences imposed by the learned Judge shall run concurrently with the result that the appellant shall serve an effective term of three years imprisonment to run from 23rd November, 2007 when he was first sentenced by the magistrate. Those shall be the orders of the Court on the appeal.

DATED and DELIVERED at ELDORET this 23rd day of October 2009.

R.S.C. OMOLO

.....

JUDGE OF APPEAL

E.O. O’KUBASU

.....

JUDGE OF APPEAL

J.G. NYAMU

.....

JUDGE OF APPEAL

I certify that this is a true copy of original.

DEPUTY REGISTRAR