



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

CRIMINAL REVISION NO. 12 OF 2017

VINCENT NGETICH KIPKEMBOI APPLICANT

VERSUS

REPUBLIC RESPONDENT

(Being revision of the order of Hon. B. R. Kipyegon SRM dated 28th September 2017 in Criminal Case No. 2568 of 2016 at the Chief Magistrates Court at Kericho)

RULING

1. The applicant has applied for revision of sentence following his conviction and sentence in Criminal Case No. 2568 of 2016. In count 1, he was charged with breaking into a building with intent to commit a felony contrary to section 307 of the Penal Code. He was charged, in count 2, with the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code. He initially pleaded not guilty to the charge and the case was set down for hearing. However, when the matter came up for hearing on 7th September 2017, he changed his plea and pleaded guilty to the charges. He was convicted on his own plea and was sentenced to 3 years imprisonment, the sentences to run consecutively.

2. By his undated application filed in Court on 9th October 2017, the applicant asks the court to review the sentence of 6 years and reduce the term or sentence him to a non-custodial sentence.

3. This ruling is made in exercise of the supervisory jurisdiction of the High Court in criminal cases provided in sections 362 to 366 of the Criminal Procedure Code. Section 362 provides that:

362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

4. The court notes from the record of the trial court that the applicant is not a first offender, and that the social inquiry report obtained prior to his sentence was not favourable to his being sentenced to a non-custodial sentence as he prays. The issue that I need to consider therefore is whether to review the order of the trial court that the sentences of three years on each of the two counts should run consecutively.

5. Section 14 of the Criminal Procedure Code provides as follows:

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

6. It is therefore lawful to pass consecutive sentences in the circumstances prescribed by section 14. In **Peter Mbugua Kabui vs Republic [2016] eKLR** the Court of Appeal stated as follows:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.

7. The court was satisfied in that case that as the offences were committed at different times, dates and against different complainants, the trial court and the High Court did not err in ordering consecutive terms for the two counts.

8. In **Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97**, the Court of Appeal for Eastern Africa considered the issue of a consecutive as opposed to a concurrent sentence and expressed the view that it was still good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.

9. I have also considered the **Sentencing Policy Guidelines** which contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide as follows:

7.13 Where the offences emanate from a single transaction, the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentence should run consecutively.

7.14 The discretion to impose concurrent or consecutive sentences lies in the court.

10. In this case, the offences charged in the two counts were committed in the same transaction, though against different complainants but at around the same time as the applicant was attempting to escape from the scene of his first offence. I am satisfied that in the circumstances, the trial court erred in imposing consecutive sentences. Accordingly, I hereby set aside the consecutive sentences and substitute the same with an order that the sentences shall run concurrently.

Dated and Signed at Kericho this 2nd day of November 2017.

MUMBI NGUGI

JUDGE



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