

**IN THE SUPREME COURT OF SEYCHELLES**

**Criminal Side: CN 23/2015**

**Appeal from Magistrates Court decision 36/2015**

**[2017] SCSC**

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**TERRY POINTE**

Appellant

versus

**THE REPUBLIC**

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Heard: 18 October 2016  
Counsel: Mr. Gabriel for the Appellant  
Mr. Asba for the Republic  
Delivered: 30 January 2017

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**JUDGMENT**

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Akiiki-Kiiza J

**[1]** The Appellant was convicted in seven different files for the offenses related to Breaking into a dwelling house, burglary and theft. He pleaded guilty in all of them and he had appeared before the same Magistrate for sentencing. He was sentenced as follows: -

- File 36/2015 (D/N No. CN 23/2015) -Breaking and entering into a building and committing a felony therein namely stealing *Contra Section 291 (a) of the Penal Code*. He was sentenced to 1-year imprisonment to run consecutively to 2 years in file number 537/ 2014.

- File 37/2015 (CN 24/2015) - Breaking and entering into a building and stealing *Contra to Section 291 (A) of the Penal Code*- He was sentenced 1 year consecutive to 1 year in file 36/2015.
- File 38/2015 –Attempted burglary first count and stealing from a vehicle- He was sentenced to 1 year on the 1<sup>st</sup> count and 1 year on the second count run concurrently then consecutive t 1 year in file 37/2015.
- File 39/15- burglary sentenced to 1-year imprisonment to run consecutively to the 1 year in file 38/2015.
- File 40/15- stealing from a person- sentenced to 1-year imprisonment to run consecutively to 1-year sentence in file 39/15.
- File 536/14 count 1 burglary and count 2- stealing in a dwelling house – sentenced to 3 years for burglary and 2 years for stealing. Both sentence to run concurrently.
- File 537/14 burglary- sentenced 2 years imprisonment to run consecutively to the 3 years in file 536/14.

**[2]** The appellant was in effect ordered to serve a cumulative sentence of 10 years imprisonment.

**[3]** The appellant raised the following grounds in his memorandum of appeal covering all the 7 files.

- (a) The total sentence of 10 years imprisonment imposed on the Appellant by the learned Magistrate is manifestly harsh, excessive and wrong in principle.
- (b) The learned Magistrate erred in imposing on the appellant in total disregard to the principle of totality and proportionality of sentences.

(c) The learned Magistrate failed to consider the fact that the appellant had pleaded guilty and expected a further credit on sentencing.

[4] Mr. Gabriel was originally representing the appellant but due to this failure to attend Court on the days fixed for the hearing of the appeals, the appellant decided to do away with the services of counsel and elected to represent himself as he wanted the appeal to be heard so that he could know his fate.

I also granted him his prayer and the case proceeded without the assistance of counsel to represent the appellant.

Mr. Asba represented the Respondent.

[5] The main thrust of the appellant's prayer was to have the cumulative sentences of 10 years imposed on him by the learned trial Magistrate in the 7 files be reduced.

[6] On the other hand Mr. Asba for the Respondent acknowledge that of recent both the Supreme Court and the Court of Appeal have tendered to hold that sentences imposed in similar situations like before us now should run concurrently and not consecutively to each other, his instructions were however that given the concept of the public interest, the trial Magistrates orders should be upheld by this Court and the appeal should be dismissed.

[7] I have carefully reviewed the lower Courts record and the submissions of Mr. Asba and those of the appellant. The matter regarding concurrent and consecutive sentencing has now been settled by the Court of Appeal.

[8] In the case of **NEDDY ONEZIME V/S THE REPUBLIC, SCA 6/13**, their Lordships held to the effect that the question the Court has to ask itself is whether in the interest of justice of the case before it, the order for consecutive sentence meets the best interest of justice. This is the crucial question to be answered for purpose of a fair decision in the matter.

Their Lordships also considered the need to observe the proportionality principle as advocated in the case of **JEAN FREDERICK PONOO V/S THE ATTORNEY**

**GENERAL, SC 38/10** by the same Court. What is to be considered by the Courts include the nature of the offense, the value of the property and the personal circumstances raised in mitigation, including a plea of guilty which could show remorse on the part of the accused person.

- [9] In the case of **RODDY LENCLUME V/S THE REPUBLIC, SCA 32/13** the Court of Appeal held *inter alia*, that Article 19 of the constitutional guarantees an accused the right to fair hearing which undoubtedly incorporated a just sentence decided by an independent and impartial Court.
- [10] The sentence to be imposed by the Court should not be so excessive as to outrage standards of decency. (see the case of **MILLER AND COCKRIELL V/S THE REPUBLIC (1977) 2 SCR 680**). Their Lordships in the **LENCLUME** case above also stated to the effect that the punishment imposed on an accused person must not be grossly disproportionate to what would have been appropriate in the circumstance of the case. That Article 16 of the Constitution prohibited a person to be subjected to cruel and inhuman treatment.
- [11] In this present appeal, the appellant was sentenced to a cumulative sentence of 10 years imprisonment for 7 different files. Most of the sentences were of 1 year (file 36/15, 37/15, 38/15, 39/15, 40/15). In file 536/14, a maximum of 3 years concurrent sentence was imposed. In file 537/14 a cumulative sentence of 5 years was imposed. ( the 2 years in 536/14 was ordered to run consecutively that of 3 years in file 537/14)
- [12] The rest of 2015 files make a total of another 5 years resulting in the cumulative sentence of 10 years imprisonment in all the 7 files.
- [13] The lower Court record shows that the accused had pleaded guilty to the charges hence showing remorse on his part. The value of the property stolen was of insignificant value. The pleas of guilty usually attract about 20 % reduction in a sentence (see **Archbold-2012 edition**). The offenses committed in 2015 were committed almost around the same period and in the same locations hence were committed in the same transaction.

[14] Putting everything into consideration and applying the principles of totality and proportionality of sentences and in line with both the ONEZIME and LENCLUME cases the consecutive sentence of 10 years imprisonment imposed on the appellant was harsh and excessive. It is accordingly quashed and set aside. It is substituted with an order for making all sentences to run concurrently in all the 7 files. This means the appellant will serve a total sentence of 3 years imprisonment as it is in the maximum sentence imposed by the learned trial Magistrate. As decreed by the trial Magistrate, the time spent on remand is deductible from the 3 years imprisonment.  
Order accordingly.

Signed, dated and delivered at Ile du Port on 30 January 2017

D Akiiki-Kiiza  
**Judge of the Supreme Court**