

I have considered the appeal and I am of the view that the appellant's complaint is justified because in all these 3 counts he ought to have been given a chance to pay a fine before the custodial sentence was considered as the sections involved in the 3 counts stipulate fine as initial punishment, imprisonment should have been imposed as an alternative punishment. After the magistrate had decided to impose custodial sentences such sentences should have been made concurrent but not consecutive as there were no circumstances for making such sentences to run consecutively as he ordered. Although the learned trial magistrate said he was being lenient, in my view he was not lenient when he made the sentences to run consecutively, considering the fact that the accused was treated as a first offender. The appeal is allowed, but as the appellant has already served half of his sentences of imprisonment I set aside the sentences imposed on him as being excessive and instead I make an order that the sentences do run concurrently with the effect that he serves only one month which he has already served.

TK
C.M. KATO
JUDGE
13/12/1994