



**Wandera v Republic (Miscellaneous Criminal Application  
E082 of 2022) [2023] KEHC 2988 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2988 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E082 OF 2022**

**RE ABURILI, J  
MARCH 27, 2023**

**BETWEEN**

**PATRICK BWIRE WANDERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Patrick Bwire Wandera file his application on August 2, 2022 seeking for sentence review so that the consecutive sentences imposed on him for the offences of stealing and handling of stolen property by Kisumu Chief Magistrate’s court in Criminal Case No E57 of 2022 be ordered to run concurrently and that a fine be considered in the alternative.
2. The sentences were imposed on July 27, 2022 as per the attached warrant of commitment for a sentence of imprisonment.
3. Section 14 of the *Criminal Procedure Code* provides that:

“14. Sentences in cases of conviction of several offences at one trial (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 therefor 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.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.



- (3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—
- (a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less;
- or (b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.
- (4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

4. In *George Mwangi Chege & 2 others v Republic* [2004]e KLR it was stated that the court can impose concurrent sentences if the sentences are in one trial and pronounced on the same date.
5. In *Nganga v Republic* [1981] KLR the court held that concurrent sentences should be imposed for offences committed in one criminal transaction unless exceptional circumstances exist.
6. In this case, the Convict was convicted and sentenced to serve consecutive sentences for the offence of stealing and handling stolen property as per the warrant of commitment. Handling stolen property was the alternative charge to stealing and once the court found the accused person guilty of the main charge of stealing, then the alternative count of handling stolen property collapses and vice versa.
7. An accused cannot be convicted on both the Main charge and the alternative and sentenced to serve consecutive sentences. The record is however not very clear as to whether the accused was sentenced on both the main charge and the alternative or there was an error in the committal warrant as the applicant did not avail full court proceedings and the charge sheet.
8. In this case, the convict was sentenced to serve nine (9) months imprisonment on each of the two counts which sentences were to run consecutively.
9. I set aside the consecutive sentences imposed and substitute them with an order that the consecutive sentences of nine (9) months imprisonment imposed shall run concurrently.
10. I so order. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 27<sup>TH</sup> DAY OF MARCH, 2023**

**R. E. ABURILI**

**JUDGE**

