



**Kariuki v Republic (Miscellaneous Criminal Application  
E184 of 2021) [2023] KEHC 3673 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3673 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E184 OF 2021**

**GL NZIOKA, J**

**APRIL 27, 2023**

**BETWEEN**

**CHARLES KARANJA KARIUKI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged in Criminal Case No 1083 of 2016, with the offence of stealing contrary to section 275 of the *Penal Code* in six counts. The particulars of each charge are as per the charge sheet.
2. He pleaded not guilty and the case went to full hearing. At the close of trial, he was found guilty, convicted and sentenced to a pay fine of Kshs 500,000 in default to serve a term two (2) years imprisonment; on count 1 and pay a fine of Kshs 300,000 in default to serve a term two (2) years imprisonment, and pay a fine of Kshs. 100,000 on each count 3, 4, 5 and 6, in default to serve a term of one (1) year imprisonment on each of the four counts. The sentence was ordered to run consecutively.
3. However, he filed a memorandum of appeal on November 22, 2021 alongside a chamber summons application seeking leave to file the appeal out of time and supported by his affidavit. It suffices to note that, in the subject application he sought that, the court considers the period he was in custody pursuant to provisions of section 333 (2) of the *Criminal Procedure Code*.
4. When requested by the court to explain whether he was appealing or seeking for review of sentence, he stated that, he wanted to forgo the appeal and pursue the application for sentence review. He then withdrew the appeal and sought for sentence review.
5. The parties were ordered to dispose of the application by filing submissions. The Respondent subsequently filed submissions however, the applicant did not file any. The Respondent submitted that the sentence passed was within the law and it has not been demonstrated that the trial magistrate committed an illegality, impropriety or mistake in sentencing the applicant.



6. That, the trial Magistrate adhered to the Sentencing Policy Guidelines that states, sentences should run consecutively if they were committed in the course of multiple transactions and there were multiple victims. Reliance was placed on; High Court Criminal Appeal No 19 of 2020 *Ndigwa Kamau alias Mbaku Munyari v Republic* and *Peter Mbugua Kabui v Republic* [2016] eKLR where the Court of Appeal held that it is not illegal to mete out consecutive term of imprisonment where distinct and separate offence are committed in different criminal transactions even though that counts are in one charge sheet and one trial.
7. Having considered that all the applicant is seeking for, consideration of the provisions of section 333 (2) of the *Criminal Procedure Code*, I note from the trial court that, he was arrested on November 28, 2016 and arraigned in court on December 6, 2016.
8. He pleaded not guilty to the charges and was granted bond of Kshs 200,000 with one surety of like amount. The surety was approved on December 19, 2016. Therefore, the period in custody was from December 6, 2016 to December 19, 2016 a period of 13 days which is negligible.
9. However, I note that the sentence for the offence of stealing he was convicted for is provided for under section 275 of the *Penal Code* which states: -

“ Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years”
10. In the instant matter he was sentenced to pay Kshs 500,000 in default to serve two (2) years imprisonment on count 1, and of Kshs 300,000 in default to serve two (2) years imprisonment on the 2<sup>nd</sup> count. It is noteworthy that, under section 28 of the *Penal Code* the default period on count 1 and 2 should have been one year on each.
11. Therefore, all the sentences in terms of fines are legal and lawful save for the default period on count 1 and 2. Therefore, the applicant will serve the default sentence of one (1) year on each count 1 and 2. In total he will serve accumulated sentence six (6) years, on the six (6) counts. The prison record to be amended accordingly.
12. It is so ordered.

**DATED, DELIVERED AND SIGNED ON THIS 27<sup>TH</sup> DAY OF APRIL, 2023.**

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Appellant present in person, in court virtually

Mr Atika for the Respondent

**Ms Ogutu: Court Assistant**

