



REPUBLIC OF KENYA



**Kamau v Republic (Miscellaneous Criminal Application E010 of 2023)
[2023] KEHC 22595 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NANYUKI
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2023
AK NDUNG’U, J
SEPTEMBER 27, 2023**

BETWEEN

FRANCIS KAMAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The ruling concerns undated notice of motion filed on April 18, 2023 seeking for consolidation of the Applicant’s appeal cases pending before this court. The application is grounded on the fact that he has three appeals pending hearing and determination before this court which are; Cr Appeal No. E068 of 2021Cr Appeal No. E069 of 2022Cr Appeal No. E070 of 2022
2. He averred that he is serving different sentences running consecutively even though the offences were similar being the offences of breaking and stealing hence the need to consolidate the appeals so that they can be heard together.
3. The Applicant’s application was opposed by the learned counsel for the Respondent. The counsel informed the court that the three appeals emanated from three different cases in that;
 - i. Cr Appeal E069 of 2022 emanated from Criminal Case 1529 of 2017;
 - ii. Cr Appeal E070 of 2022 emanated from Criminal Case 916 of 2021; and
 - iii. Criminal Appeal E068 of 2021 emanated from Criminal Case 1462 of 2017.
4. Counsel argued that the three cases were tried by different magistrates and the only common thing was that the accused was the same. That consolidation can only be allowed if the cases emanated from the same court and cause.



5. The Applicant in response stated that this court may consolidate the cases as it deems fit. Furthermore, the cases involved the same accused person and offences were similar in nature.
6. The Respondent counsel responded by stating that even though the charges were similar, they involved different complainants and facts were totally different.
7. This court has been invited to determine whether the subject appeals should be consolidated.
8. From the material before the court, it is clear that the Appellant was tried by different magistrates. The offences were committed at different times in that two of the cases were committed in the year 2017 and one was committed in the year 2021.
9. I get valuable input on criteria or parameters for consolidation from the case of *Stephen Wanyee Gichubi v Republic* [2008] eKLR, where the applicant sought that the sentences that were imposed in the separate criminal cases do run concurrently and the Honourable Judge while rejecting the application stated that;

“Now in the present instance, Criminal Case No. 1348 of 2003 involved a crime committed on 19th December, 2001 – and the charge was stealing contrary to s.275 of the Penal Code.

Criminal Case No. 2413 of 2004 involved several complainants, and the main charge was making a document without authority; and the offence was committed on 29th July, 2004.

Criminal Case No. 8943 of 2004 carried the charge of being in possession of forged bank notes – an offence committed on 15th November, 2004.

The trials took place and were concluded at different times, in different Courts. Is this a situation in which a consolidation of the charges could have been achieved? Obviously, no; there was, lacking, the concomitant transactions of criminal acts which gave them common origin, purpose and timing, and which would provide the essential similarity that dictates consolidated hearing. Different complainants were involved; the motions of trial were unrelated; and so, these were essentially quite different trials.

From the authority of *Ngibuini v. Republic*, it is apparent to me that there would be no legal basis for imposing concurrent sentences, where it was entirely inconceivable that the trials could have been consolidated. The basis of the Court’s discretion to make the different sentences concurrent, in my opinion, is that there had been a real opportunity for the consolidation of the trials; and that such consolidation would operate in the cause of justice, by according the Court a fuller view of the magnitude of the offences, and by giving the accused person a chance to conduct a co-ordinated defence (emphasis added).”

10. In our instant suit, the three criminal cases against the Applicant were not founded on the same facts, or form or are part of a series of offences. The offences occurred on different dates, different places and one offence was committed in the year 2021 while the other cases were being heard.
11. In view of the above, there is no basis whatsoever for the consolidation of the appeals. The application is thus without merit and is dismissed.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 27TH DAY OF SEPTEMBER 2023

A.K. NDUNG’U

JUDGE

