

REPUBLIC OF KENYA

IN THE HIGH COURT AT HOMA BAY

MISC. CRIMINAL APPLICATION NO. 17 OF 2015

BETWEEN

SETH OKINYI ODIPO APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has moved this court by a Notice of Motion filed 28th July 2015 in which he states as follows;
 1. *THAT I was convicted and sentenced to (4) years and (1) year respectively vide the above stated criminal case file numbers for the offences of stealing and being in possession of bhang.*
 2. *THAT I humbly pray to the honourable court to consider consolidating the two cases to run concurrently as they are not running consecutively.*
2. In *Homa Bay Case No. 1052 of 2015*, the applicant was charged and convicted of the offence of breaking into a building and committing a felony contrary to **section 306(a)** of the *Penal Code (Chapter 63 of the Laws of Kenya)*. He was convicted on 26th July 2013 and sentenced to serve 4 years imprisonment.
3. While serving sentence, he was charged and convicted on his own plea of guilty for being in possession of 6 rolls of bhang in contravention of **section 3(1) and 2(A)** of the *Narcotic Drugs and Psychotropic Substances Control Act, 1994*. He was sentenced to serve 1 year imprisonment on 14th May 2015.
4. As the two charges and convictions were at different times and related to different offences the court cannot order that the same be served concurrently as the applicant requests unless there are special reasons or circumstances. **Section 37** of the *Penal Code* which deals with this situation provides, in part, as follows;

Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof;

5. Since no special reason has been provided for me to order that the subsequent sentence be served concurrently with the previous one, the Notice of Motion is rejected and dismissed.
6. The applicant and the Office of the Director of Public Prosecutions, Homa Bay to be notified.

DATED and DELIVERED at HOMA BAY this 31st day of July 2015.

D.S. MAJANJA

JUDGE