



**Mbugua v Republic (Criminal Miscellaneous Application  
E089 of 2024) [2025] KEHC 3080 (KLR) (4 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3080 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL MISCELLANEOUS APPLICATION E089 OF 2024**

**JM NANG'EA, J**

**MARCH 4, 2025**

**BETWEEN**

**JAMES MBUGUA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By this Notice of Motion dated 16<sup>th</sup> May 2024, the Applicant pleads that the sentences the lower court (Hon. E. Oboge, RM) imposed against him in Traffic Case File Number E620 of 2022 be ordered to run concurrently, rather than consecutively as directed by that Court. The application is expressed to be brought as a Revision application pursuant to the provisions of Sections 363 and 364 of the *Criminal Procedure Code*.
2. Section 362 of the *Criminal Procedure Code* empowers this court to call for and examine the record of the lower court to satisfy “itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.”
3. Section 363 of the Code is inapplicable herein as the powers stated therein are exercisable by a Senior Magistrate in the lower court. Section 364 allows this court to “alter or reverse” the order complained of if warranted.
4. I have perused the lower court’s record. The applicant was fined stated sums in default of payment of which he would serve out given prison terms in relation to seven (7) Counts he complains of.
5. I note that the Applicant and the Prosecution Counsel filed written submissions in opposition to the application. The nature of such application, however, is that a reply or submissions need not be filed. It suffices for the court to study the lower court’s record and make a decision whether or not to revise the lower court’s order(s).



6. The legal position is that in every case where there is conviction in more than one count and fines are imposed as alternative to custodial sentences, the custodial sentences shall be ordered to run consecutively if the fines are not paid.
7. The lower court therefore rightly directed execution of the sentences imposed to wit; consecutively.
8. There is accordingly no lawful ground on which to order revision and the application is dismissed.

**J. M. NANG'EA - JUDGE**

**RULING DELIVERED VIRTUALLY THIS 4<sup>TH</sup> DAY OF MARCH, 2025 IN THE PRESENCE OF:**

Ms Sang for the DPP

Applicant, Present

Court Assistant (Jeniffer)

**J. M. NANG'EA - JUDGE**

