



**Ngunia v Republic (Miscellaneous Criminal Application
E089 of 2024) [2025] KEHC 4458 (KLR) (7 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4458 (KLR)

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

DKN MAGARE, J

APRIL 7, 2025

BETWEEN

CHARLES WATATUA NGUNIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over a Notice of Motion application filed by the Applicant on 19.9.2024 seeking a reconsideration of sentence to run concurrently.
2. The application is supported by the affidavit of the Applicant and it was deposed in material as follows:
 - a. The Applicant was charged in MCCR No E157 of 2024 and E040 of 2024.
 - b. The Applicant was charged in MCCR No E040 of 2024 with obtaining money by false pretenses contrary to Section 313 of the [Penal Code](#). There was also an alternative charge of impersonation contrary to Section 382 of the [Penal Code](#).
 - c. The Applicant was sentenced to serve 3 years imprisonment on count I and 1 year imprisonment on count II with the two sentences to run concurrently.
 - d. In MCCR No E157 of 2024, the Applicant was charged with obtaining money by false pretenses contrary to Section 313 of the [Penal Code](#). There was also an alternative charge of stealing in a dwelling house contrary to Section 268(1) as read with Section 279 (b) of the [Penal Code](#). He was sentenced to serve 2 years imprisonment.
 - e. The Applicant pleaded guilty in all charges.
3. The Respondent's advocate's case was that the offences were different in the two files. The Respondent as such objected to the move by the Applicant to have the sentences run concurrently.



Analysis

4. The issue is whether this court should interfere with the sentence imposed by the trial court upon the Applicant.
5. The Complainants were different in MCCR No E157 of 2024 and E040 of 2024. In MCCR E157 of 2024, the Applicant was sentenced to serve two years imprisonment while in MCCR No E040 of 2024, he was sentenced to serve 3 years in count I and 1 year in count II, running concurrently. Aggrieved, the Applicant now seeks that the files be consolidated and the sentences to run concurrently.
6. The discretion that this Court enjoys in sentencing permits a balanced and fair sentencing, which is also the hallmark of enlightened criminal justice. As was stated in *State v Tom, State v Bruce* [1990] SA 802 (A), Smalberger, JA:

“The first principle is that the infliction of punishment is pre-eminently a matter for the discretion of the trial court ... That courts should, as far as possible, have an unfettered discretion in relation to sentence is a cherished principle which calls for constant recognition. Such discretion permits of balanced and fair sentencing, which is a hallmark of enlightened criminal justice. The second, and somewhat related principle, is that of the individualization of punishment, which requires proper consideration of the individual circumstances of each accused person. This principle too is firmly entrenched in our law... A mandatory sentence runs counter to these principles. (I use the term “mandatory sentence” in the sense of a sentence prescribed by the legislature which leaves the court with no discretion at all -either in respect of the kind of sentence to be imposed or, in the case of imprisonment, the period thereof.) It reduces the court’s normal sentencing function to the level of a rubber stamp. It negates the ideal of individualization. The morally just and the morally reprehensible are treated alike. Extenuating and aggravating factors both count for nothing. No consideration, no matter how valid or compelling, can affect the question of sentence... Harsh and inequitable results inevitably flow from such a situation. Consequently, judicial policy is opposed to mandatory sentences...as they are detrimental to the proper administration of justice and the image and standing of the courts.”

7. It is the duty of the court to ensure that the sentences so prescribed are imposed in accordance with the *Constitution* and the law. As was elaborated by the persuasive Constitutional Court of Uganda in *Susan Kigula & 417 others v Attorney General*, Const. App. No 3 of 2006:

“The legislature has all the powers to make laws including prescribing sentences. But it is the duty of the courts to ensure that the sentences so prescribed are imposed in accordance with the Constitution.”

8. I therefore have no doubt that the purpose and objectives of sentencing as stated in the Judiciary Sentencing Policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the ends of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 *Sentencing Guidelines* are as follows: -

- “1. 3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.



- i. Retribution: To punish the offender for their criminal conduct in a just manner.
- ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- iv Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender's contribution towards meeting those needs. Community
- v Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender's criminal acts.
- vi. Denunciation: To clearly communicate the community's condemnation of the criminal conduct.
- vii. Reconciliation: To mend the relationship between the offender, the victim and the community.
- viii. Reintegration: To facilitate the re-entry of the offender into the society"

9. The Applicant did not challenge the severity of sentence imposed but prayed that the sentences in the two criminal cases against him be compiled concurrently. The Court of Appeal in [Peter Mbugua Kabui v Republic](#) [2016] eKLR expressed itself on the matter as hereunder:

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment. It is our considered view that the exception in Section 14 (3) of the [Criminal Procedure Code](#) is inapplicable to this case in light of the provisions of Section 7 (1) of the [Criminal Procedure Code](#). We further observe that Section 14 of the [Criminal Procedure Code](#) stipulates that for purposes of an appeal, the aggregate of consecutive sentences imposed in case of convictions for several offences at one trial, shall be deemed to be a single sentence. We take the view that given the circumstances of this case, the consecutive sentences totalling 20 years imposed on the appellant, cannot said to be excessive. In any event, as we have pointed out earlier, severity of sentence is a question of fact and this Court has no jurisdiction to consider issues of fact in a second appeal. Is the sentence illegal or unlawful” We find that the sentence was legal and lawful, and we have no legal basis for interfering with the same.”

10. The offences that the Applicant committed were in a series but were not committed at the same time against the same person. There are two complainants. I understand the Applicant to argue that the sentences in both cases should run concurrently. This cannot be the case as the offences against each of the two complainants were distinct, different and committed through different transactions. The trial court correctly granted concurrent sentences in respect of the individual counts and I do not see the basis upon which to interfere, also since the sentences were well meted out independently in the two



different files. The trial court also considered and stated that the time spent in custody be taken into consideration. It is not the Applicant's case that such time was not taken into consideration.

11. The net effect is that the application is devoid of merit. I dismiss it.

Determination

12. In the upshot, I make the following orders: -

- a. The application dated 29.8.2024 and filed on 19.9.2024 lacks merit and is dismissed.
- b. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 7TH DAY OF APRIL, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Kimani for the State

Applicant present

Court Assistant- Michael

M. D. KIZITO, J.

