



**Okuku v State (Criminal Appeal E006 of 2025) [2025] KEHC 4464 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4464 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPEAL E006 OF 2025**

**A MABEYA, J**

**APRIL 8, 2025**

**BETWEEN**

**BRIAN OKOTH OKUKU ..... APPELLANT**

**AND**

**STATE ..... RESPONDENT**

**RULING**

1. The appellant was charged with the offences of burglary contrary to section 304(2) of the [Penal Code](#) and stealing contrary to section 279 (b) of the [Penal Code](#).
2. The appellant pleaded guilty to both charges. After considering the appellant's mitigation as well as the probation report and the fact that the appellant was a 1<sup>st</sup> time offender who had been in custody awaiting the probation report for one month, the Court proceeded to sentence the appellant to serve a period of five years on each charge. The trial court directed that both sentences run concurrently.
3. Aggrieved by the said sentence, the appellant filed a petition of appeal dated the 4/2/2025 in which he raised the following grounds: -
  - a. The learned trial court magistrate erred in both law and in facts in not considering the appellant's sentence in *Criminal Case No. E510 OF 2024 and E511 of 2024* ought to run concurrently but not consecutively since they both originated/committed in the same transaction and connection.
  - b. The learned trial magistrate erred in both law and in facts in not considering the 10 years' sentence is excessive and harsh.
  - c. The learned trial magistrate erred in both law and in facts in failing to consider that the appellant's plea of guilty was a sincere act of remorseful deserving a commensurate lenient sentence.



4. When the appeal came up before this Court for the first time on the 7/4/2025, the appellant applied to withdraw the appeal. There was no appearance for the state and thus the application for withdrawal was unopposed.
5. This Court is therefore asked to determine whether or not the appellant should be allowed to withdraw his appeal.
6. There is no provision on withdrawal of appeals under the Civil Procedure Code. Be that as it may, I have considered the record. It is clear that the appellant did voluntarily plead guilty to the offences charged. However, he was charged with another accused in two cases, to wit, *Maseno Principal Magistrates Court Criminal Cases Nos. 510/2024 and 511/2024*, respectively.
7. The charge sheets in both cases were word for word, the offences were the same, the date and place of the offence were the same, the value of the items likewise the same. When the facts were read to the accused, they were word for word. That notwithstanding, the trial court still sentenced the accused in both cases.
8. In view of the foregoing, I find that the accused should not have been charged twice for the same offences which were committed at the same time and against the same victim. In this regard, I find that the proceedings in the latter case, *Maseno PM's Cri. Case No. 511 of 2024 Republic v Brian Okoth Okuku & Another* was instituted and prosecuted irregularly.
9. I exercise the revision jurisdiction of this Court under section 362 of the [Criminal Procedure Code](#) examined the regularity of the proceedings in the latter case, ie. *Maseno PM's Cri. Case No. 511 of 2024 Republic v Brian Okoth Okuku & Another* and hereby find them to have been irregular. I call for the record and quash the same accordingly. The conviction and sentence therein are hereby quashed and set aside.
10. As to the *Maseno PM's Cri. Case No. 510 of 2024 Republic v Brian Okoth Okuku & Another*, the proceedings therein were in order. The right to withdraw any matter from Court is an integral part of the right to access justice and vested in the appellant. Once he decides to withdraw the appeal, nobody, not even the Court, has the right to stand on his way and force him to pursue the same.
11. With such appreciation, I find that nothing would justify the Court in denying the appellant his right to terminate the appeal by way of withdrawal.
12. Accordingly, the appellant's application to withdraw this appeal is hereby allowed and the appeal is accordingly marked as withdrawn.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

