



**ODPP v Juma (Criminal Revision E115 of 2024)
[2025] KEHC 6999 (KLR) (22 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6999 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E115 OF 2024**

JN ONYIEGO, J

MAY 22, 2025

BETWEEN

ODPP APPLICANT

AND

EDDY ODUOR JUMA RESPONDENT

(Being a revision application against the sentence of Hon. J. Omwange delivered on 31-08-2024 in Garissa CM’s court criminal case No. 753 of 2018)

RULING

1. Vide a letter dated 15.11.2024, from the Office of the Director of Public Prosecutions this court was moved with a view to review the sentence by Hon. Omwange P.M. delivered on 31.08.2024 in Criminal Case No. 753 of 2018, Republic vs Eddy Oduor Juma alias Ismail Oduor Juma.
2. From the face of the said letter, the prosecution decried the fact that the respondent was charged with 5 counts of various offences. He was convicted on Counts I, II, III and V while he was acquitted on count IV. The trial magistrate proceeded to sentence him to 10 years’ imprisonment on all the counts but failed to indicate whether the sentences were to run consecutively or concurrently. According to the prosecution, sentence in counts I, II and III should have run consecutively while count V to run concurrently with counts I, II, and III.
3. The application was canvassed by way of written submissions. The applicant vide its undated submissions reiterated the content of its letter. The applicant placed reliance on section 12 of the Criminal Procedure Code, hereinafter the CPC which stipulates that:

“ Any court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass.”



4. Similarly, reliance was further placed on section 14 of the CPC which provides for circumstances under which a court can direct sentences to run concurrently or consecutively. That in the case of Peter Mbugua Kabui vs Republic [2016] eKLR, the court held thus:

“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.”

5. Further, the applicant relied on the judiciary Sentencing Policy Guidelines provided paragraph 7.13 which provides that; where the offence emanates from a single transaction, the sentence should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims, the sentences should run consecutively.
6. Counsel for the applicant contended that the trial magistrate did not consider the fact that the offences herein as charged did not emanate from a single transaction as the evidence shows that Count I, II, III were committed on 24.09.2024 while Count V was committed on 21.10.2017. Thus the evidence supports the fact that the offences as charged were committed in the course of multiple transactions. To that end, this court was urged to exercise its discretion as provided under section 362 as read with section 364(1)(a) of the CPC and find that the impugned sentence is illegal.
7. The respondent filed submissions dated 26.03.2025 contending that the respondent was ordered to serve a 10-year imprisonment term and the same was ordered to start from 23.10.2018 being the date he was charged. That while passing the sentence, the trial magistrate exercised his discretion on the premise that the respondent was a first time offender. It was argued that a convict should benefit from the least severe sentence as stipulated in article 50(2)(p) of *the constitution* and a concurrent sentence under the circumstances will be more ideal and realistic.
8. Additionally, it was urged that counts I, II, and III were founded on the evidence of PW1 in reference to the Infinix phone. As such, the said mobile phone was the bedrock of all the five counts. The respondent relied on the following cases: Amon Muthuri vs Republic [2020] eKLR; Mohamed Reza Nazari Sarabi vs Republic [2020] eKLR and Ndwiga Kamau vs Republic [2021] eKLR. This court was thus urged to find the application lacking in merit and dismiss the same.
9. I have considered the application by the applicant herein and the response thereof. I have equally considered submissions by both parties. The question therefore is whether the trial court acted on a wrong principle while sentencing the applicant?
10. Briefly, accused person was charged with the following offences:

Count I: Being a member of a terrorist group contrary to section 24 of the *Prevention of Terrorism Act*, 2012. The particulars were that; on 24.09.2018 at Garissa County Township in Garissa County within the Republic of Kenya, he was found being a member of a terrorist group namely, Al- Shabaab which is an outlawed terrorist organization by the Kenyan Gazette Notice No. 12585 of 2010 in contravention of the said Act.

Count II: Being in possession of an article connected with the commission of a terrorist act contrary to section 30 of the *Prevention of Terrorism Act*, 2012. The particulars were that on 24.09.2018 at Garissa County Township in Garissa County within the Republic of Kenya, he was found in possession of an Infinix Note 3 mobile phone model X601 of IMEI number XXXXXXXXXXXXXXX/XXXXXXXXXXXXXXX which was fitted with a Telkom sim card



of S/No. 892540700002718 and a safaricom micro sim card, which had videos namely: (1) xxxxxxxxxxxxxxxx (2) XXXXXXXXXXXx (3) about. About Rogo.mp4.xfile (4) about. About Rogo Ulazima wa Kupigana na makafir.mp4xfile, (5) about.Sheikh About Rogo_Rahimahullah_nin ninijihad.mp4.xfile (6) 8-Hijrah2015 – T0Aldawla (7) al-muhacc84jirucc84-in east Africa-e2809cal-ghurabacca84_magazine-422 (8)_5-Ebook-Martys in Syria-2014 (9) _ Heroes of Syria-2014 which is an article for use in instigating the commission of a terrorist act in contravention of the said Act.

Count III: Collection of information of a terrorist group contrary to section 29 of the *Prevention of Terrorism Act*, 2012. Particulars being that on 24.09.2018 at Garissa Township within the Republic of Kenya, he was found in possession of an Infinix Note 3 mobile phone X601 of IMEI Number XXXXXXXXXXXXXXX/XXXXXXXXXXXXXXXX which was fitted with a Telkom sim card of s/no. 8925407000027 and a safaricom micro sim card, which he used to collect information namely (1) 4_162927046048088811 (2) 4_162927046048089914, (3) about.Aboud Rogo.mp4.xfile, (4) about.Aboud Rogo-ulazima Wa Kupigana Na Makafir.mp4.xfile, (5) about.SheikhAboutRogo_Rahimhulla_Ni nini jihad.mp4.xfile xfile (6) 8-Hijrah2015-ToAldawla (7) al-muhacc84jirucc84n-in-east-aftrica-e2809cal-ghurabacc84_magazine-422 (8)_5-Ebook-Martys-in-syria-2014 (9) _4-heroes-of-syria-2014, which is an information for use in the commission of a terrorist Act in contravention of the said Act.

Count IV: Soliciting and giving support to the commission of a terrorist act contrary to section 9 of the Prevention of the Terrorism Act. The particulars were that on 25.09.2017 at unknown place within the republic of Kenya jointly with others not before court, knowingly posted on his facebook account #Kama siokuipenda dunia nakuichukia Janna..ni nini kinachotufanya tusikoke kwenda Jihad????? #Tuwacheni mali yetu, mabibi na watoto wetu tukainusuru dini ya uislamu which was in support of a terrorist act.

Count V: Incitement to terrorism contrary to section 27 of the Prevention of the Terrorism Act of 2012. Particulars being that on 21.10.2017 at unknown place within the republic of Kenya jointly with others not before court, he published information on his Facebook account mtume Muhammad (saw) anasema kama hukutoka kuenda jihad, wala hukuizungumzia nafsi yako juu ya kwenda kupigana... utakufa kifo cha ujahiliya (ukafiri): Tutokeni twende tuwasaidie ndugu zetu mujahedeen which information is intended directly or indirectly to incite a group of persons to carry out a terrorist act.

11. He pleaded not guilty to all the counts and the matter proceeded for hearing.
12. The constitutional provision on supervisory jurisdiction of the High Court to make orders of revision is Article 165 (6) and (7) of *the Constitution* of Kenya, 2010 which stipulates that:

“6 The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising judicial or quasi-judicial function but not over a superior court.

7 For the purposes of clause (6) the High Court may call for the record of any proceedings before the subordinate court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”

13. Statutorily, Sections 362 and 364 of the *Criminal Procedure Code* empower this Court to deal with the issue at hand and the said sections provide as follows: “

362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying 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”

364

- (1). In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to his knowledge, the High Court may-
 - a) ...
 - b). In the case of any other order other than an order of acquittal, alter or reverse the order.
2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence.”
- 3 ...

14. In the same breadth, Section 14 of the *Criminal Procedure Code* provides as follows: -

- (1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, for those offences, to the several punishments prescribed therefore which the court is competent to impose; and those punishments when consisting of imprisonment shall commence the one after the expiration of the other in the order the court may direct, unless the court directs that the punishments shall run concurrently.

15. In the case of Peter Mbugua Kabui vs Republic [2016] eKLR, the Court of Appeal stated as follows:

“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.

16. Similarly, in the case of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97, the Court of Appeal for Eastern Africa considered the issue of a consecutive as opposed to a concurrent sentence and expressed the view that it was still good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.

17. Further, the judiciary Sentencing Policy Guidelines provide as follows: -

- “7. 13 – Where the offence emanates from a single transaction the sentences should run concurrently. However, where the offences are committed in the course of multiple transactions and where there are multiple victims the sentences should run consecutively”.



18. The Court of Appeal defined the phrase ‘same transaction rule’ in the case of Republic vs Saidi Nsabuga S/O Juma & Another [1941] EACA and revisited it again in Nathan vs Republic [1965] EA 777 as follows: -

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

19. In the instant case, the charges in Counts I, II and III indicate that the offences therein were committed at the same time or date and at almost the same place and were all in the same transaction. Count V was committed on a different transaction and further, a different date and place. The said offences are related to terrorism activities as provided for in the *Prevention of Terrorism Act* of 2012. In my view, the trial court ought to have ordered the sentences in Counts I, II and III to run concurrently and Count V to run consecutively. This is so because the offence was not committed in close proximity of time as compared to counts I, II and III which were connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect.

20. I have also perused the authorities as annexed by the respondents and I note the circumstances under which the court acted in the manner that they did, are not applicable in this case.

21. As such, considering the above against the principles to be considered in meting out consecutive or concurrent sentences, it is my considered view that in the circumstances of this case, the trial court erred in not making an order as to how the sentences ought to run. The trial court ought to have made orders to the effect that the sentences in counts I, II and III to run concurrently while the Count V to run consecutively with counts I,II and III.

22. In the result, I do correct the error as follows:

- i. Sentence in Counts I, II and III do run concurrently.
- ii. Sentence on Count V to run consecutively with counts I, II and III

23. The Deputy registrar to cause the committal warrant to be amended to reflect the correct sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 22ND DAY OF MAY 2025

J. N. ONYIEGO

JUDGE

