



**Anyange v Republic (Criminal Miscellaneous Application  
E013 of 2024) [2025] KEHC 9074 (KLR) (23 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9074 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E013 OF 2024**

**JN KAMAU, J**

**JUNE 23, 2025**

**BETWEEN**

**MAXWEL ANYANGE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was charged with two (2) Counts for the offence of house breaking contrary to Section 304(1) and the offence of Stealing contrary to Section 279(b) of the *Penal Code* Cap 63 (Laws of Kenya) and another Count for the offence of Burglary contrary to Section 304(2) and Stealing contrary to Section 279(b) of the *Penal Code*.
2. He was convicted and sentenced to five (5) years on each count and the same were made to run consecutively.
3. On 24<sup>th</sup> January 2024, he filed Notice of Motion application dated 13<sup>th</sup> December 2023 seeking review of his sentence. He averred that the Trial Court failed to direct that his sentences run concurrently pursuant to Section 12 and 14 of the *Criminal Procedure Code* and Section 37 of the *Penal Code*. He averred that the said provisions clothed this court with inherent powers to direct the sentences to run concurrently for sentences passed at the same trial or different trials whether under the same transaction or not.
4. He further cited Articles 24(1)(e), 25(c), 29(f) and 50(2)(p) of *the Constitution* of Kenya, 2010 and contended that his rights to fair trial could not be limited and that he was entitled to a least prescribed sentence.



5. His undated Written Submissions were filed on 28<sup>th</sup> October 2024 while those of the Respondent were dated 6<sup>th</sup> January 2025 and filed on 9<sup>th</sup> January 2025. The Ruling herein is based on the said parties' Written Submissions which they both relied on in their entirety.

### Legal Analysis

6. The Applicant urged the court to consider Section 37 of the *Penal Code* and Section 135(1) of the *Criminal Procedure Code* and hold that his sentence run concurrently.
7. In opposing the said application, the Respondent placed reliance on the case of *B.M.N vs Republic* [2014]eKLR where it was held that the general principle was that if an accused person had committed a series of offences at the same time in a single act/transaction, a concurrent sentence would be given. However, if separate and distinct offences were committed in different criminal transactions even though the counts were in one (1) charge sheet and were dealt with in one (1) trial, it was not illegal to mete out a consecutive term of imprisonment.
8. It argued that the Applicant was rightly sentenced as the offences were committed at different times and were never series of acts committed in the same transaction. It urged this court to find that the present application lacked merit and dismissed it.
9. Section 14 (1) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) provides as follows:-

“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.”
10. The Court of Appeal Court reiterated this provision in the case of *Peter Mbugua Kabui vs Republic* [2016]eKLR. In the case of *Republic vs Saidi Nsabuga S/O Juma & Another* [1941] EACA which was cited in *Nathan vs Republic* [1965] EA 777, the Court of Appeal emphasised the phrase “same transaction rule” where it held that 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.
11. The Sentencing Policy Guidelines, 2023 further addressed the question of concurrent and consecutive sentences. It provided as follows:-
  - 2.3.24 A concurrent sentence will normally be appropriate where the offences arise out of the same incident or facts. E.g., poaching of several animals that vary in the degree of protection they are afforded under the law; a burglary ‘spree’ of several properties committed in one night; fraud and associated forgeries, or a dangerous driving incident where multiple victims are injured as a result of one offence of dangerous driving e.g., driving into a bus stop.
  - 2.3.25 A consecutive sentence will normally be appropriate where the offences arise out of unrelated facts or incidents e.g., attempting to obstruct the course of justice in relation to an unrelated offence; where the defendant is convicted of dealing in drugs and also possession of a firearm upon arrest – the firearm offence is not an intrinsic part of the drugs matter and requires separate recognition, or where the accused commits a theft on one occasion and an assault on a different victim on another occasion.



12. In this instant case, a perusal of the Charge Sheet showed that the offences were committed on different days against different victims. There were multiple transactions and multiple victims and consequently, the sentences ought to have run consecutively.
13. It was therefore the view of this court that the consecutive sentences that were meted out to the Applicant herein were not illegal rendering the present application devoid of merit.

**Disposition**

14. For the foregoing reasons, the upshot of this decision was that the Applicant's Notice of Motion application dated 13<sup>th</sup> December 2023 and filed on 24<sup>th</sup> November 2024 was not merited and the same be and is hereby dismissed.
15. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 23<sup>RD</sup> DAY OF JUNE 2025**

**J. KAMAU**

**JUDGE**

