



**Njagi v Republic (Miscellaneous Criminal Application
E078 of 2024) [2025] KEHC 11160 (KLR) (23 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
MISCELLANEOUS CRIMINAL APPLICATION E078 OF 2024**

RM MWONGO, J

JULY 23, 2025

**IN THE MATTER OF ARTICLES 21, 22, 23, 27, 28, 165(3)(B), 50(1), 25(C)(D), 51(2)
OF THE CONSTITUTION OF KENYA**

AND

**IN THE MATTER OF ARTICLES 20(1)(2)(4)21(1), 48, 258(1) OF THE CONSTITUTION
OF KENYA**

AND

IN THE MATTER OF SECTION 11 OF THE SEXUAL OFFENCES ACT

BETWEEN

DOMINIC KARIUKI NJAGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

The Application

1. The applicant's application herein is titled 'petition' and seeks the following orders:
 - a. A declaration that the 3 consecutive sentences making a total of 30 years imprisonment are harsh, excessive and unconstitutional, contravening Articles 25(c) and 50 of *the Constitution* and section 329 of the *Criminal Procedure Code*;
 - b. A declaration that the constitutional rights of the petitioner were violated by ordering the sentence of the 3 counts to run consecutively by the trial court;
 - c. A declaration in the alternative for review of the petitioner's sentence in the interest of justice;



- d. An order for his sentence to be reduced since he is now old and it is within the law to reduce his sentence due to old age; and
 - e. An order that the court exercise discretion and order that the sentences run concurrently.
2. The application/petition is not supported by an affidavit. However, the applicant stated that he is replying on the cases of *Muruatetu & another v Republic; Katiba Institute & 5 others (Amicus Curiae)* (Petition 15 & 16 of 2015 (Consolidated)) [2017] KESC 2 (KLR) (*Muruatetu 1*) and *Peter Mbugua Kabui v Republic* [2016] KECA 713 (KLR).

Grounds of Opposition

3. The respondent filed grounds of opposition stating that the application is misconceived and that the orders sought were considered and determined through the judgment in *Embu HCCRA E041 of 2023*. It stated that the sentences meted upon the applicant are legal and commensurate to the offences he was convicted for. It was argued that the court lacks jurisdiction to entertain the application herein as the same is bad in law and amounts to an abuse of the court process.

Background

4. The applicant was charged with 3 counts of committing an indecent act with minors under section 11(1) of the *Sexual Offences Act*. He was convicted and sentenced to 10 years imprisonment on each count, the sentences to run consecutively. The court noted that, in each case, the offences were committed on different dates.
5. Dissatisfied with the decision of the trial court the applicant filed a constitutional petition in this Court on 16th June 2020 seeking sentence review. The petition was dismissed. He then lodged an appeal before this court. The said appeal was also dismissed and the finding of the trial court upheld through a judgment delivered on 30th November 2022.

Parties' Submissions

6. The application was canvassed by way of written submissions.
7. The applicant submitted that the trial court was unfair in its sentencing contrary to the provisions of section 136(a-c) of the *Criminal Procedure Code*. He stated that he should have been sentenced to 10 years on each count, running consecutively since the crimes were reported on the same day.
8. On its part, the respondent submitted that a sentence review is not possible based on *Muruatetu 1* because in that case, the Supreme Court stated that resentencing was only applicable in murder cases. It stated that the court's jurisdiction to reconsider the sentence has already been exhausted. Even under section 362 of the *Criminal Procedure Code*, this court's jurisdiction only entitles it to supervise lower courts and bodies, but cannot review the sentence because it cannot supervise itself. In any event, it has already considered the issue through its appeal decision.

Issue for Determination

9. The issue for determination is whether the terms of the sentence imposed upon the applicant can be reviewed by this Court.



Analysis and Determination

10. The applicant's main question is whether the terms of the sentence can be reviewed so as to run concurrently rather than consecutively. The legal presumption at the point of sentencing for multiple offences is that the sentences will run consecutively. Section 14 of the [Criminal Procedure Code](#) provides thus:

“(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 therefor 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.” [Emphasis added]

11. The law is clear that the general position where conviction is for two or more distinct offences, imprisonment sentence shall commence one after the other unless the Court directs that the punishments shall be concurrent. Thus, whether the sentences run concurrently or consecutively is a preserve of the trial/sentencing court and it specifies this through its discretion as provided under the Judiciary Sentencing Policy Guidelines 2023 as follows:

“2. 3.21 Notwithstanding the provisions under the [Criminal Procedure Code](#) and the [Penal Code](#) summarized in paragraph 2.3.4 above, the discretion to impose concurrent or consecutive sentences lies with the court. There are two elements to the concept of totality, and these apply as much to terms of imprisonment as they do to community service and fines.”

12. In the applicant's case, the trial court exercised its discretion by stating as follows:

“...in the circumstances, he is sentenced to serve ten (10) years imprisonment in the three counts, which sentences should run consecutively as the offence was committed on different dates.....”

13. When the trial court's decision was considered on appeal, this court also discussed the issue of application of the consecutive sentence as applied. In its decision now published as *Njagi v Republic* [2022] KEHC 16003 (KLR), this court stated:

“28. Further, 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”.

29. Given that counts I, II and III took place on different dates and on different complainants, it is thus clear that the said offences did not take place at the same time and in the same transaction. They were not 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. They did not constitute a single invasion of the same legally protected interest. The trial magistrate was therefore right when she sentenced the appellant to serve ten (10) years imprisonment in the counts herein and that the sentence was to run consecutively as the offences were committed on different dates.” [Emphasis added]

14. This goes to show that the issue raised through the application herein, was exhaustively determined through the appeal. Therefore, it is a waste of judicial time to revisit the same matter since this court lacks jurisdiction to do so. Any such attempt to review this Court’s decision would amount to a superior court supervising itself, which is an illegality, save for the instances allowed by the Supreme Court in *Muruatetu 1*.

Conclusions and Disposition

15. In light of and for the foregoing reasons, this court lacks jurisdiction to determine the present application, the issues having been settled through the first appeal. The application/petition thus lacks merit and is hereby dismissed in its entirety.
16. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 23RD DAY OF JULY, 2025.

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R. MWONGO

JUDGE

Delivered in the presence of:

Dominic Kariuki Njagi – Applicant in person

Ms. Nyika for the State

Francis Munyao - Court Assistant

