



**Ndege v Republic (Miscellaneous Criminal Application
E080 of 2025) [2025] KEHC 9912 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E080 OF 2025**

A MABEYA, J

JULY 10, 2025

BETWEEN

LUKE OWINO NDEGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with others in the Ksm CMCRC Case No. 1033 of 2021. There were a total of 7 counts, with two alternative charges to count no. 7. After trial, the trial court convicted them on counts 4 and 5. On 17/7/2024, the trial court sentenced them to serve 2years imprisonment on each count. The court did not specify whether the sentences were to run concurrently or consecutively.
2. By a Motion on Notice dated 16/5 2025, the applicant applied that his sentences do run concurrently. That as it were, the sentences were to run consecutively.
3. Ms. Kagali for the state did not oppose the application as the same was brought under section 14 of the Criminal Procedure Code, Chapter 75, Laws of Kenya.
4. In Bernard Kimani Gacheru v Republic [2002] eKLR, it was stated that: -

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not



sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

5. As to whether sentences should run concurrently or consecutively, section 14 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya 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.”

6. In *Peter Mbugua Kabui v 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.”

7. The Sentencing Policy Guidelines 2023 contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide 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.

2. 3.26 A consecutive sentence may also be appropriate where the offences are of the same or similar kind but where the court is of the view that a concurrent sentence will not sufficiently reflect the overall criminality e.g. assault of a police officer whilst trying to evade arrest for the original offence; assault of the same victim committed in the context of domestic violence or where there are sexual offences against the same victim.

2. 3.27 Other considerations that apply include the following:

i) Where an accused person commits an additional offence during the operational period of a suspended sentence, and the court decides to activate the suspended sentence, the additional



sentence should normally be consecutive as it will have arisen out of separate facts.

- ii) Where consecutive sentences are to be passed, the court must add up the sentences together and then consider if the total is just and proportionate. A downward adjustment can then be made. See Part V and the GATS.
- iii) Where sentencing multiple offenders who each have differing levels of culpability based on their role in the offence, any downward adjustment must be applied by the same proportion for each accused person so that the lead offender can be clearly identified.
- iv) Where several offences are all imprisonable but none of the individual offences merit a custodial sentence, the custody threshold may be crossed by reason of multiple offending.
- v) Indeterminate sentences should generally be ordered to run concurrently. In the absence of parole or similar mechanisms, it is not practicable at this stage to advise on the application of either determinate or indeterminate sentences imposed after the passage of a previous indeterminate sentence. The general principles of proportionality should be applied.”

8. In the present case, the charge sheet dated 31/8/2021 show that, the counts facing the accused were committed on two different dates and places. However, counts 4 and 5 of which the court convicted the accused (and therefore the applicant) were committed on an unknown date in January, 2021. From the nature of the offences, they were committed in one transaction.
9. In view thereof, and applying the test in Peter Mbugua Kabui v Republic (supra) and the principles espoused in the Sentencing Policy Guidelines 2023, this Court holds that the sentences should have run concurrently.
10. Accordingly, I allow the application and order that the sentences meted out on the applicant shall run concurrently from 17/7/2024.

It is so ordered.

DATED and DELIVERED at Kisumu this 10th day of July, 2025.

A. MABEYA, FCI Arb

JUDGE

