



REPUBLIC OF KENYA



**Okumu v Republic (Criminal Revision E146 of 2024)  
[2025] KEHC 9779 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9779 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ITEN  
CRIMINAL REVISION E146 OF 2024**

**E OMINDE, J**

**JULY 3, 2025**

**BETWEEN**

**VINCENT AMBWERE OKUMU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. What is pending before this court is the Applicants' Notice of Motion dated 27<sup>th</sup> march 2025 seeking review of sentence. The brief background underlying the Application is that the Applicant was charged in two separate matters with the same offence of being in possession of narcotic drugs contrary to section 3(2) (a) of the Narcotics and Psychotropic Substance Act.
2. In Iten Senior Principal Magistrates' Case No E957 of 2023 the particulars were that on 9<sup>th</sup> September 2023, at about 5 pm Stop Bit Bar in Iten Township within Elgeyo Marakwet County he was found in possession of 20 rolls of cannabis worth Kshs. 1000 hidden in his pocket trouser. In Iten Senior Principal Magistrates Criminal Case No. E1122 of 2023, the particulars were that on the 16<sup>th</sup> day of November 2023 at around 1230 hours at Tambach GK prison at Kapterik sub-location, Kaptuilong Location, Keiyo North Sub - County within Elgeyo Marakwet County, he was unlawfully found in possession of Narcotic Drugs Namely Cannabis (bhang) to wit nine rolls with a market value of Kshs. 630 by storing them while concealed inside his anus in contravention of the said Act.
3. That in Iten Senior Principal Magistrates' Case No E957 of 2023 he was convicted and sentenced to pay a fine of Kshs. 50,000/- in default to serve one-year imprisonment vide the judgement delivered on 19/04/2024. In Iten Senior Principal Magistrates Criminal Case No. E1122 of 2023 he was sentenced to serve 5 years' imprisonment vide the judgement delivered on 20/03/2024. In her judgement, the trial magistrate stated that she had taken into account the 14 months he had spent in remand.



4. The Applicant has now approached this court vide the instant Notice of Motion which seeks the following orders, reproduced verbatim;
  1. That the Applicant is seeking for orders to review his sentence under section 362 as read with sec 364 of the criminal procedure code and in reliance to article 50 (2) (p) of [COK](#).
  2. That the Applicant is seeking for orders that his two sentences of 5 years and 1-year sentence to run concurrently from 20<sup>th</sup> March 2024.
  3. That the Applicant is seeking for orders that a period of 6 months and 11 days from his cumulative sentence of 6 years to account for the pre-trial period spent in remand custody the review will be in compliance to section 333 (2) of [CPC](#).
  4. That the Applicant is seeking for orders that his 5 years' sentence be as a default to a fine which is expressly provided under statutory provision under which he was charged under.
  5. That the Applicant is seeking for orders that his sentence be reviewed to correct the punitive excessive and harsh sentence.
  6. That the Applicant is seeking for orders for a review of his sentence that is reflective of the current sentencing objectives that are less punitive that are listed in the sentencing policy guidelines 2023
  7. That the Applicant is praying to be present during the determination of this petition.
5. The Application is expressed to be brought under sections 362 as read with 364 of the [Criminal Procedure Code](#), Section 333(2) of the [Criminal Procedure Code](#) and Article 50 of the [Constitution](#).
6. In his affidavit, the Applicant deposed that he was charged and convicted of the offence of being in possession of narcotic substances and sentenced to serve 5 years' imprisonment vide the judgement delivered on 20/03/2024. He was charged with a similar offence and sentenced to serve 1 year and pay a fine of Kshs. 50,000. He stated that he has not appealed the decisions but is seeking a review of sentence.
7. The Applicant urged that he prays that his two sentences be ordered to run concurrently under the principle of concurrent sentences since the offences are similar in nature in all aspects. Further, that the sentences should commence from 20/03/2024 which is the date of conviction of 5 years. Additionally, he prayed that the court considers reducing a period of 6 months and 11 days from his sentence in compliance to section 333(2) of [CPC](#) as pre-trial period from his sentence of 6 years. The Applicant urged the court to consider imposing a reasonable fine in default to his five (5) years as the act he was charged under expressly provide for an option of a fine.
8. The Applicant stated that he is seeking a review of his sentence which is harsh and excessive and not proportional to the circumstance of the case. He additionally stated that he is remorseful and he pleaded guilty to take responsibility for his actions. He further urged that the review by the court should reflect the progressive sentencing objectives that would ensure he is rehabilitated and reintegrated back to community which would be achieved by a reduced sentence.
9. In response to the Application, the Respondent filed submissions dated 24/04/2025 through Prosecution Counsel Racheal Mwangi. She gave a brief background of the matter including the charges and the conviction. She pointed out the particulars of the first case, stating that the Applicant was found guilty, convicted and sentenced to a fine of Kshs. 50,000 in default 1 year in prison on 17/04/2024 and further, that the Applicant has essentially already served his sentence.



10. She stated the particulars of the second case and submitted that when the Applicant was sentenced on 20/03/2024 by Honourable Virginia Karanja (PM) had considered the time the Applicant had spent in pre-trial custody. She cited Section 333(2) of the *Criminal Procedure Code* in this regard, pointing out that the trial court considered the 14 months spent in custody in the judgement.
11. She submitted that the Application to have the sentences run concurrently is overtaken by events since the time for the first offence in criminal case number E957 of 2023 has already been spent. Furthermore, the sentences were meted out by two different Magistrates on two unrelated cases that is E957 of 2023 and E 1122 of 2024 and therefore the sentences could not be consolidated. She urged the court to dismiss the Application.

### **Analysis & Determination**

12. The following issues arise for determination;
  - i. Whether the court should review the sentence
  - ii. Whether the sentences should run concurrently
  - iii. Whether the trial court took into consideration the time spent in pre-trial custody
13. On the two issues of whether the court should review the sentences and also order that they run concurrently, the court notes that it has been submitted that the Applicant has already served the sentence in Iten SPM CR Case No E957 of 2023. In the circumstances, any Application with respect to this case has now been overtaken by events and the court is only left to handle the Application with respect to Iten SPM Criminal Case No. E1122 of 2023. The Court notes and is satisfied that under the provisions of Section 362 of the *Criminal Procedure Code*, it has the requisite jurisdiction to hear and determine this Application.
14. The said Section 362 provides as follows:

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.
15. In the case of *Shadrack Kipkoech Kogo v R.* Eldoret Criminal Appeal No.253 of 2003 the Court of Appeal stated thus: -

“sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered (see also *Sayeka v R.* (1989 KLR 306)”
16. Section 3(2) of the Narcotics and Psychotropic Substance Act provides as follows;
  - (2) A person guilty of an offence under subsection (1) shall be liable: -
    - (a) in respect of cannabis, where the person satisfies the court that the cannabis was intended solely for his own consumption, to imprisonment to a term of not more than five years or to a fine of not more than one hundred thousand shillings;



17. In the case of *Jackson Konde Kyalo v Republic* (2018) eKLR the court had this to say regarding imposition of fine as a first option against the imprisonment term;

“The law and policy in sentencing in (sic) that where the law provides for a fine or imprisonment or both then unless the court for good reasons decides to give both, the accused person has a right to be given an option of a fine. In *Annis Mubidin Nur v Republic*, High Court Criminal Appeal No. 98 of 2001, Mwera, J, as he then was, stated the relevant policy in sentencing, most appropriately:

“... unless circumstances obtain which irresistibly [impede] a trial Court from imposing a fine first where the law provides for a fine in default of a prison term, the option of a fine must be visited first. This is a sound and tested principle in the art of sentencing ...”

Accordingly, when the trial court opted to mete out an imprisonment (sic) sentence without the option of a fine, there was an error and thus an improper sentence which can only be viewed as too harsh. Harsh only to the extent that it denied the appellant his option of a fine.”

18. 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.

19. 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.”

20. Further the *Judiciary's Sentencing Policy Guidelines*, at paragraph 7 provide as follows: -

“7. – Where the offence emanates from a single transaction the sentences should  
13 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”.

21. The Court of Appeal has defined the phrase ‘same transaction rule’ in the case of *Nathan v Republic* [1965] EA 777 where the court stated 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.”



22. In light of the relevant Statutory provisions as well as case Law as herein summarised, it is clear that a court can only order that sentences run concurrently where the offence emanates from a single act and/or transaction. In the instant case, even though the charges are similar, the court notes that the offences that comprises each charge were committed in different places on different dates and under different circumstances. For this reason, they do not belong in a single transaction and the sentences meted out can therefore not run concurrently. This Application is therefore misconceived and lacks merit.
23. On the application that the Applicant ought to have been given an option of a fine by the Trial Court by virtue of the fact that he was a 1<sup>st</sup> offender, the court needs to point out that it is precisely the facts given by the applicant himself in this Application in support of the reliefs that he seeks from this court that militates against his assertion that he was a first offender at the time of the conviction in Iten SPM Criminal Case No. E1122 of 2023. This is because it is now clear from the facts that he has given in support of this Application that at the time of sentencing in the said case, he had already been convicted in a similar case earlier.
24. It is these two convictions over a similar charge though disparate in their material particulars as already herein summarised which then informed his Application that the court orders that the two sentences run concurrently. For this reason, I am not at all satisfied that he was prejudiced by the Trial Court not giving him an option of a fine because he was in fact not a 1<sup>st</sup> offender. I therefore see no reason to disturb the sentence of 5 years' imprisonment as meted out Iten SPM Criminal Case No. E1122 of 2023 and I accordingly uphold the same.
25. On whether the trial court took account of the time spent in prison before conviction and sentence as provided under mandatory provisions of Section 333(2) of the *Criminal Procedure Code*, I note from the judgement that the Learned Trial Magistrate she stated inter alia in her sentencing proceedings that she had also considered the remand duration of 14 months over and above the offence committed as well as the mitigation by the Applicant and then proceeded to sentence the accused.
26. In this regard, I am well satisfied that the period spent in remand custody during the period of the Trial was already accounted for in the 5-year sentence meted out to the Applicant. This being the case, I find that his Application under Section 333(2) lacks merit and the same is accordingly dismissed in its entirety. The upshot then is that they Applicant's Application in its totality lacks merit and the same is accordingly dismissed. Right of Appeal 14 days.

**READ DATED AND SIGNED AT ELDORET ON 3<sup>RD</sup> JULY 2025**

**E. OMINDE**

**JUDGE**

