



REPUBLIC OF KENYA



**Oluoch v Republic (Miscellaneous Application E039 of 2025)
[2025] KEHC 9563 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9563 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS APPLICATION E039 OF 2025**

A MABEYA, J

JULY 3, 2025

BETWEEN

ADON JUMA OLUOCH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This ruling determines the application dated 28/11/2025. In the Motion, the applicant sought that the three sentences meted out against him in HCCR Case No. 27 of 2010 (Murder), Winam PMCR Case No. 2077 of 2009 (Assault causing actual bodily harm) and Winam PMCR Case No. 2088 of 2009 (rape) do run concurrently.
2. The application was based on the grounds set out in the body of the Motion and in his affidavit of even date.
3. In Winam Criminal Case No. 2080 of 2009, the applicant was convicted on the 25/11/2009 of the offence of attempted rape contrary to section 4 of the *Sexual Offences Act* No. 3 of 2006 and sentenced to seven (7) years' imprisonment.
4. In Winam Criminal Case No. 2077 of 2009, the applicant was convicted of the offence of assault causing actual bodily harm contrary to section 251 of the Penal Code and was sentenced to Three (3) years imprisonment.
5. In Kisumu HCCR No. 27 of 2010, the applicant was convicted on the 21.12.2012 of the offence of murder contrary to section 203 as read with 204 of the *Penal Code* and was sentence to death. He appealed to the Court of Appeal in Kisumu Criminal Appeal No. 47 of 2013 and his sentence was reduced to 35 years' imprisonment.
6. The applicant now seeks consolidation of his said sentences to run concurrently.



7. The purpose of sentencing is to ensure that the sentence imposed is commensurate and proportional to the offence committed. However, the same may be interfered with where the circumstances so dictate. In *MM1 v Republic* [2022] eKLR, the Court held: -

“The principles guiding interference with sentencing by the appellate Court were properly, in my view, set out in *S v Malgas* 2001 (1) SACR 469 (SCA) at para 12 where it was held that: “A Court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would usurp the sentencing discretion of the trial court... However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as “shocking”, “startling” or “disturbingly inappropriate.”

8. Sections 12 and 14 of the *Criminal Procedure Code*, Cap. 75 of the Laws of Kenya and section 37 of the *Penal Code*, Cap. 63 of the Laws of Kenya provide for instances where sentences may run consecutively and concurrently.

9. They provide as follows: -

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

14.

- (1) Subject to subsection (3), when a person is convicted over 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 punishments shall run concurrently.
- (2) In the case of consecutive sentences, it shall not be necessary for the Court, by the reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent impose on conviction of a single offence, to send the offender for trial before a High Court.
- (3) Except in case to which section 7 (1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences-
 - a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or



- b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.
- (4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”

10. Section 37 of the Penal Code provides as follows: -

“ 37. Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.”

11. In Peter Mbugua Kabui v Republic [2016] eKLR, referring to the cases of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97, Ondieki v R [1981] KLR 430 and Nganga v R [1981] KLR 530, the court stated as follows: -

“... the practice is where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, to impose concurrent sentences. That is still good practice.”

12. In B.M.N. v Republic [2014] eKLR, the Court of Appeal dealt with a similar situation and pronounced itself as follows: -

“(15) 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.”

13. In the present case, the offences committed by the applicant were different and were committed in different transactions and times. Considering the aggravated nature of the offences committed, I find no reason to order that they run consecutively.

14. In the premises I find the application to be unmeritorious and dismiss the same.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

