



**Okuku v Republic (Criminal Miscellaneous Application E061 of 2025)  
[2025] KEHC 12660 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12660 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E061 OF 2025**

**A MABEYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**BRIAN OKOTH OKUKU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 19/12/2024, Brian Okoth Okuku ('the applicant') and Phaniel Otieno were arraigned before the Maseno Principal Magistrates Court on charges of Burglary and Stealing contrary to section 302(2) and 279(b) of the Penal Code and in the alternative handling stolen goods contrary to section 322(1) of the Penal Code.
2. Of interest is that the applicant was charged in two separate cases, viz, Maseno Criminal Case No. E510 of 2024 Republic vs Brian Okoth Okuku & Phaniel Otieno Osuso and Maseno Criminal Case No. E511 of 2024 Republic vs Brian Okoth Okuku & Phaniel Otieno Osuso.
3. In both cases, the applicant pleaded guilty and was convicted and sentenced to 5 years on each part, that is Burglary and Stealing, respectively. The sentences were to run concurrently on each case. For the two cases therefore, the applicant is to serve a total of 10 years' imprisonment. The sentence was meted out on 24/1/2025. His co-accused denied the charges and is to stand trial.
4. On 3/3/2025, the applicant took out a Motion on Notice seeking that the orders in the two criminal cases; criminal case Nos. 510 and 511 of 2024 be consolidated and the sentences be ordered to run concurrently. He contended that the offences in the two cases arose from the same transaction and were committed on the same day. That in the premises, the sentences meted out in the two cases should be made to run concurrently.
5. At the hearing, he relied on his averments in the Supporting affidavit while the State urged the Court to call for the files and satisfy itself of the veracity of the allegations.



6. I have called for the two criminal case files. The particulars of the charge in Criminal Case No. E510 of 2024 were that: -

“Burglary contrary to section 304(2) and stealing contrary to section 279(b) of the penal code. brian okoth okuku and phaniel otien osuso: On the night of 14<sup>th</sup> day of December, 2024 at around 2300hrs at Nanga village in Seme Sub-County within Kisumu County, broke and entered the dwelling house of Mercyline Onyango and therein did steal two sacks of maize 90kgs each, ten 3x6 blue mattress, five duvets, blow dry (Ramton), water heater and as per attached inventory all valued at Kshs.88,300/- the property of Mercyline Onyango.”

7. The Inventory was attached and had 14 items with their respective values. The same was signed by PC Paul Igadwa, Nelson Ochor and Mercyline Onyango. The latter was the complainant.

8. The particulars in Criminal Case No. E511 of 2024 were that: -

“Burglary contrary to section 302(2) and stealing contrary to section 279(b) of the penal code.

Brian Okoth Okuku and Phaniel Otieno Osuso: On the night of 13<sup>th</sup> day of December, 2024 at around 2300hrs at Nanga village Seme Sub-county within Kisumu County broke and entered the dwelling house of Fr. Godwin Aloo Oluoch and therein did steal one LG television 32’ Sumsung home theatre, Atique telephone, mass kit, Mikachi microwave and as per attached inventory all valued at Kshs.320,395/- the property of Fr. Godwin Aloo Oluoch.”

9. To the charge sheet was attached an inventory of 14 items with their respective values. The same was signed by the applicant, PC Paul Igadwa, PC Nelson Ochor and Fr. Godwin Oluoch as the complainant.

10. From the foregoing, it is clear that contrary to the applicants’ assertions, although the offences in both cases were committed on the same day, they were against two different persons/complainants and for different properties. Each complainant made a separate complaint in respect of their respective stolen items. The reports were made at Kombewa Police station as OB Nos. 02/13/12/2020 and 14/15/12/2024, respectively.

11. Accordingly, I find that the applicant was properly charged in two different cases. That he properly pleaded to the two separate cases and was properly sentenced. The sentences cannot run concurrently as they are in respect of two different cases.

12. In the premises, I find the Motion dated 3/3/2025 to be without merit and I dismiss the same accordingly.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

