



REPUBLIC OF KENYA



KENYA LAW
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**Simiyu v Republic (Criminal Revision E007 of 2025)
[2025] KEHC 12512 (KLR) (9 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12512 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E007 OF 2025
RN NYAKUNDI, J
SEPTEMBER 9, 2025**

BETWEEN

DAN DERRICK SIMIYU ALIAS DANTE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Dan Derrick Simiyu was charged with the offence of robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code.
2. The brief facts of the particulars are that on the 23rd March 2024 along Limo farm road being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Peter Ngok his mobile phone make I-phone valued at Kshs 200,000/= and laptop make HP Spectra valued at Kshs 60,000/=, power bank valued at Kshs 3500/= and his car key and immediately before the time for such robbery threatened to shoot the said Peter Ngok.
3. On Count 2, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 28th March 2024 along Peter Crest Academy in Kapsoya within Uasin Gishu County, jointly being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Moses Omondi Sino his mobile phone make Samsung AO4S and a charger valued at 43,000 and immediately before the time of such robbery threatened to shoot the said Moses Omondi Sino.
4. On Court III, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 1st day of April 2024 KVDA Garden in Kapsoya Location within Uasin Gishu County being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Silah Kipkoech Kososei a mobile phone make Infinix note valued at



- Kshs 14,000/= and Kshs 1000/= in cash and immediately before the time of such robbery threatened to shoot the said Silah Kiipkoech Kososei.
5. On Count IV, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 1st day of April 2024 along Nandi Road in Kapsoya Location within Uasin Gishu County, jointly being armed with a dangerous weapon namely a panga robbed Dismas Baraza his mobile phone make ITEL Smart phone valued at 17,000/=, Tecno 5528 valued at Kshs 3500/= and a memory card valued at 500/= and immediately before the time of such robbery assaulted the said Dismas Baraza with a blunt object.
 6. On Count V, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 7th day of April 2024 along Nandi Road in Kapsoya Location within Uasin Gishu County, jointly being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Ezekiel Macharia his mobile phone make Samsung Galazy A-12 valued at Kshs 20,300/= and immediately before the time of such robbery threatened to shoot the said Ezekiel Macharia.
 7. On Count V, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 7th day of April 2024 along Nandi Road in Kapsoya Location within Uasin Gishu County, jointly being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Ezekiel Macharia his mobile phone make Samsung Galazy A-12 valued at Kshs 20,300/= and immediately before the time of such robbery threatened to shoot the said Ezekiel Macharia.
 8. On Count VI, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 1st day of April 2024 along Plateau Road in Kapsoya Location within Uasin Gishu County, jointly being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Tushar D. Patel his mobile phone 13 mini IMEI NO. 35 4852524654486 valued at Kshs 60,000/= and immediately before the time of such robbery threatened to shoot the said Tushar D. Patel.
 9. On Count VII, he was charged with robbery with violence contrary to Section 295 as read with 296(2) of the Penal Code. The particulars being that on the 9th day of March 2024 along Garden City Estate in Kasarani Sub-County, jointly being armed with a dangerous weapon namely Revolver Pistol Serial Number 21C79408 robbed Charles Thuo Muya his motor cycle Reg. NO. KMEG 338E make boxer 150 black in colour valued at 75,000/=, phone make Tecno smart 4 valued at 19,000/=, a black jacket valued at Kshs 1500/= and cash Kshs 1500/= all valued at Kshs 97,000/= and immediately before the time of such robbery threatened to shoot the said Charles Thuo Muya.
 10. On Count VIII, he was charged with robbery with being in possession of a firearm without a firearm certificate contrary to Section 4(1) as read with section 4(3) of the *Firearms Act* (Cap. 114 Laws of Kenya). Particulars are that on the 7th day of April 2024 at New Safari Guest House in Turbo Sub-County, within Uasin Gishu County jointly with another was found in possession of a Revolver Pistol Serial Number 21C79408 without a firearm certificate.
 11. On Count IX, he was charged with robbery with possession of suspected stole property contrary to Section 323 of the Penal Code. Particulars are that on 7th day of April 2024 at Eldoret Township in Turbo Sub-County, within Uasin Gishu County having been detained by CI Michael Lemaiyan, PC Joel Karanja and PC Mathew Mosop as a result of the exercise of the powers conferred by Section 26 of the Criminal Procedure Code, had in his possession 46 mobile phones as per attached list reasonably suspected to have been stolen or unlawfully obtained.



12. On Count X – Alternative to Count (6), he was charged with handling stolen goods, contrary to Section 322 (2) of the Penal Code. Particulars are that on the 7th day of April 2024 at Plateau Road in Ainabkoi Sub-County within Uasin Gishu County otherwise than in course of stealing, dishonestly received or retained a mobile phone make Samsung galaxy A-12 knowing or having reasons to believe it to be stolen goods.
13. On Count XI – Alternative to Count (5), he was charged with handling stolen goods, contrary to Section 322 (2) of the Penal Code. Particulars are that on the 7th day of April 2024 at Plateau Road in Ainabkoi Sub-County within Uasin Gishu County otherwise than in course of stealing, dishonestly received or retained a mobile phone make I Phone 13 mini knowing or having reason to believe it to be stolen goods.
14. On Count XII – Alternative to Count (7), he was charged with handling stolen goods, contrary to Section 322 (2) of the Penal Code. Particulars are that on the 7th day of April 2024 at Plateau Road in Ainabkoi Sub-County within Uasin Gishu County otherwise than in course of stealing, dishonestly received or retained Motor cycle Registration Number KMEG 388E knowing or having reason to believe it to be stolen.
15. The applicant moved the court vide a notice of motion seeking the following orders:
 - a. Spent
 - b. That the applicant is seeking review of his sentence to run concurrently under section 14(3) of the CPC.
 - c. That the applicant praying for time spent in remand under Section 333(2).
 - d. That this hon. court has the power bestowed by *the constitution* and the law under Article 165(3) to ascertain applications of this nature and award a redress.
 - e. That the Applicant beg to be present during the hearing and final determination of this application.
16. Which application is supported by a supporting affidavit on the following grounds:
 - a. That I was charged with 12 counts, tried, convicted and sentenced to serve 13 years' imprisonment Count 1 – to count 7 to serve 10 years' imprisonment for the offence of robbery with violence contrary to Section 296(2) of the Penal Code and Count 8 to count 12 to serve 3 years' imprisonment for being in possession of firearm without certificate contrary to Section 4(1), 14(3) of the Firearm Act by Hon. Mikoyan on 19th September 2024.
 - b. That I am seeking sentence review in accordance to Section 14(3) of the CPC for sentence to run-concurrently.
 - c. That I am praying for time spent in remand custody to be factored in my sentence.
 - d. That I am first offender seeking leniency of the court.
 - e. That I am first offender, remorseful. Repentant and reformed and rehabilitated person and I have learned the incarceration and pray to be allowed by the honorable court to play role model in the society.
 - f. That this honorable court be pleased to grant me a fair opportunity to argue my petition before the court.



Decision

17. From this motion the applicant has lodged an application on revision based on two issues namely;
 - a. Whether in determining the sentence imposed by the learned trial Magistrate there was an error on the face of the record of him not taking into account the provisions of 333(2) of the Criminal Procedure Code.
 - b. Whether in imposing the sentences the learned trial Magistrate erred in not ordering the sentences to run concurrently.
18. With regard to the provisions of Section 333(2) of the Criminal Procedure Code, the letter and spirit of the law is that in determining the sentence to be imposed on a person convicted on an offence, a court may take into account any time spent in custody by the person as a result of the offence. The starting point for considering this question requires asking whether the time served on remand constitutes punishment for the purposes of *the Constitution*. In my considered view, I answer this in the affirmative given the strength of the underpinnings on the protection of the fundamental rights and freedoms. In this respect, I have in mind Article 25(a) of *the Constitution* which provides that the rights and fundamental freedoms from torture and cruel, inhuman or degrading treatment or punishment may not be limited. Article 27 of *the Constitution* provides for rights to equality and freedom from discrimination. In addition, in Article 29 every person has inherent dignity and to have that dignity respected and protected. Whereas in Article 29 every person has the right to freedom and the security of the person which includes the right not to be deprived of freedom arbitrarily or without just cause. It is also a constitution imperative under Article 49 (1) (h) that a suspect to an offence has a right to be released on bond or bail on reasonable conditions pending a charge or trial unless there are compelling reasons not to be released.
19. This question on pretrial detention to be given as a credit period when a trial court is imposing sentence upon conviction of an offender is to meet the purposes of *the Constitution* while remand time is initially imposed for administrative purposes, it must subsequently be deemed punishment given the provisions of Article 50 (2) (a) of *the Constitution* which expressly states that every accused person has the right to a fair trial which includes the right to be presumed innocent until the contrary is proved.
20. The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society. This basic purpose of punishment is accomplished “by imposing just sanctions” that further one or more sentencing objectives: “denunciation, deterrence, separation of offenders from society, rehabilitation, reparation, and promoting a sense of responsibility of offenders. The relevant sentencing principles also include proportionality and parity principles.
21. The scope of credit period spent in remand custody by the Applicant be and is hereby computed with effect from the 7th July 2024.
22. The second prayer is based on the application of the concept of the sentences to run concurrently. In the case of *Nathan v Republic* [1965] EA 77 it was held that:

“If a series of acts are so connected together by proximity of time, criminality of criminal intent, continuity of action and purpose, or by relation of cause and effects as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”



23. We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory. It would be impossible for such courts to fulfil their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. The people for whose benefit these two systems are maintained are deeply interested that each system shall be effective and unhindered in its vindication of its laws. The situation requires, therefore, not only definite rules fixing the powers of the courts in cases of jurisdiction over the same persons and thing in actual litigation, but also a spirit of reciprocal comity and mutual assistance to promote due and orderly procedure.
24. There is also what they call the tyranny of judicial discretion as a tool of governance in administration of justice. On this area of law, on sentencing there should be a keen interest in its application given the aspects that sentences may run concurrently or consecutively. Generally, the principles in this regime of consecutive and concurrent is well laid out in our criminal law and it is fashioned as follows in part;
- “That if multiple terms of imprisonment are imposed on an accused at the same time, or if a term of imprisonment is imposed on an accused who is already subject to an undischarged term of imprisonment, the terms may run concurrently or consecutively Multiple terms of imprisonment imposed at the same time run concurrently unless the court orders or the statute mandates that the terms are to run consecutively. Multiple terms of imprisonment imposed at different times run consecutively unless the court orders that the terms are to run concurrently.”
25. Whether a sentence is served concurrently with or consecutively to an existing sentence, is a determination generally to the discretion of court within carefully delineated statutory parameters. I have reviewed the record of the trial court and I find no compelling and substantial circumstances in which the learned trial Magistrate made a departure of not ordering the sentences to run concurrently. This is what *the Constitution* says under Article 50 (2) (p) (q);
- “Accused has a right to the benefit of the least severe of the prescribed punishments for an offence. If the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and
- If convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”
26. The court, in determining the particular sentence to be imposed, shall consider-
- a. The nature and circumstances of the offense and the history and characteristics of the defendant;
 - b. The need for the sentence imposed-
 - a. To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offence;
 - b. To afford adequate deterrence to criminal conduct;
 - c. To protect the public from further crimes of the defendant; and ordering concurrent or consecutive sentences.
27. This application on whether the sentence shall run consecutively or concurrently has been considered and on the face of it there is more compelling evidence for an order of the sentences from the same transactions to be ordered to run concurrently.



28. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT ELDORET THIS 9TH DAY OF
SEPTEMBER 2025.**

.....

R. NYAKUNDI

JUDGE

