



**Njeri v Republic (Miscellaneous Application 50 of 2023)
[2024] KEHC 4506 (KLR) (Crim) (11 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4506 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYANDARUA
CRIMINAL
MISCELLANEOUS APPLICATION 50 OF 2023
CM KARIUKI, J
APRIL 11, 2024**

BETWEEN

ANNE NJERI APPELLANT

AND

REPUBLIC RESPONDENT

(Being a Revision against the original conviction and sentence by Honourable S N Mwangi – Senior Resident Magistrate delivered on dated 25th March 2021 in the Chief Magistrate Court at Nyahururu Criminal Case No. 2248 of 2018)

RULING

1. By application dated 29/5/2023 the applicant seeks orders:
 - a. That the Nyahururu CMC criminal file number MCCR 2248/2018 Republic Versus Ann Njeri be recalled before the court for perusal and scrutiny.
 - b. That the court be pleased to declare invalidity of the sentences meted out against the applicant in the said case in as far as they were ordered to run consecutively and not concurrently totaling to 13 years instead of 4 years that they are unconstitutional, are against Judicial policy on sentencing, they deny the applicant the benefit of a lesser sentence and they were meted out pursuant to multiplicity of counts arising from or emanating from a single transaction and so ought to have been served simultaneously and proceed to order them to run concurrently taking into account the period already served in prison.
2. It sets grounds that:



- i. The applicant was convicted and sentenced to serve 4 year jail term in count V 4 years in count VI, 2 years in count VII and 3 years in count VIII which were ordered to run consecutively from 25/3/2021.
 - ii. No appeal was preferred against the conviction or sentencing on time
 - iii. The first said counts of possession and preparation to commit a felony emanated from a single transaction as opposed to multiplicity of transactions
 - iv. An earlier application for revision that is Nyahururu High Court Criminal Revision No.042/2022 was struck out or dismissed on a technicality or want of jurisdiction
 - v. This court has supervisory jurisdiction over the lower courts or inferior tribunals
 - vi. This Honourable court has original unlimited jurisdiction under the Constitution on violation or threatened violations of rights
 - vii. The order for the four sentences to run consecutively is invalid, unconstitutional and unjustified as the applicant will end up serving cumulatively 13 years in prison as opposed to 4 years if they were to run concurrently.
 - viii. The said sentences of up to 13 years has denied the applicant the benefit of a lesser punishment of 4 years which the Constitution mandates or provides for and hence a violation
 - ix. The sentences run contrary to the Judiciary's Sentencing policy Guidelines paragraph 7.
 - x. In the case of Peter Mbugua Kabui v Republic (2016) eKLR, the Court of Appeal stated that{

“ 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.
3. It is supported by the Ann Njeri Applicant Affidavit sworn on 29/5/2023 which reiterates the grounds above.
 4. The Respondent opposes same and has filed grounds two (2) of them:
 - a. That the application is misconceived, a nonstarter and ought to be dismissed.
 - b. That the offences herein were committed in the course of multiple transactions and there were multiple victims hence sentences ought to run consecutively.
 5. The trial court in sentencing in page 42 of the sentence (proceedings) sentenced applicants as follows:In Count V – the 3rd Accused person in sentences to serve 4 years imprisonmentIn Count VI - the 3rd accused person is sentenced to serve 4 years imprisonment.In Count VII – the 3rd accused person is sentenced to serve 2 years imprisonmentIn count VIII – the 3rd accused person is sentenced to serve 3 years imprisonment.The 3rd accused person’s sentences as to run consecutively and if aggrieved by the decision of this court, they have the right of appeal in fourteen (14) days.

Issues, Analysis And Determination

6.
7. The applicant having raised the issue as to the sentences not having been ordered to run concurrently, the question therefore is whether the trial court acted on a wrong principle.



8. 10. 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.
9. 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.
10. In *Sawedi Mukasa s/o Abdulla Aligwaisa* [1946] 13 EACA 97, the Court of Appeal for Eastern Africa considered the issue of a consecutive as opposed to a concurrent sentence and expressed the view that it was still good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.
11. Further *Sentencing Policy Guidelines* provide as follows: -
- “– Where the offence emanates from a single transaction the sentences should 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”.
12. The Court of Appeal has defined the phrase ‘same transaction rule’ in the case of *Republic v Saidi Nsabuga S/O Juma & Another* [1941] EACA and revisited it again in *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.
13. In scholarly text on *principles of sentencing* D.A. Thomas (Haremann 2nd Edition [1979] page 53 articulated the rationale of one transaction rule as follows:
- “The essence of one – transaction rule appears to be that consecutive sentences are in appropriate when all the offences taken together constitute a single invasion of the same legally protected interest. The principle applies where two or more offences arise from the same facts.....but the fact that the two offences are connected simultaneously or close together in time does not necessarily mean that they amount to a single transaction.”
14. (See *Muthangya Mutembei v Republic* [2019] eKLR)
15. In our instant case, the trial court in sentencing in page 42 of the sentence (proceedings) sentenced applicants as follows: ...
- a. In Count V – the 3rd Accused person in sentences to serve 4 years imprisonment



- b. In Count VI - the 3rd accused person is sentenced to serve 4 years imprisonment.
 - c. In Count VII – the 3rd accused person is sentenced to serve 2 years imprisonment
 - d. In count VIII – the 3rd accused person is sentenced to serve 3 years imprisonment.
16. The 3rd accused person’s sentences as to run consecutively and if aggrieved by the decision of this court, they have the right of appeal in fourteen (14) days
17. In our case the charge sheet shows the offences were committed in the course of multiple transactions and where there are multiple victims the sentences should run consecutively Thus; the sentences were not illegal and thus the court finds no merit of the revision application and thus makes the orders;
- i. The application is dismissed and sentence confirmed.

DATED, SIGNED, AND DELIVERED AT NYANDARUA THIS 11TH DAY OF APRIL 2024

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C KARIUKI
JUDGE

