



REPUBLIC OF KENYA



**Mwangi v Republic (Criminal Revision E010 of 2024)  
[2024] KEHC 4572 (KLR) (2 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4572 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E010 OF 2024**

**GL NZIOKA, J**

**MAY 2, 2024**

**BETWEEN**

**HARUN GITAU MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By a notice of motion application filed on 9<sup>th</sup> May, 2024, the application is seeking for the following orders:
  - a. That the two sentences to run concurrently.
  - b. Convert the sentences into a non-custodial sentence.
  - c. Give any relief it may deem fit appropriate to give.
2. The application is supported by an affidavit of the applicant in which he avers:
  - a. That, I am the applicant herein and therefore conversant with the facts herein.
  - b. That, I was charged with two counts, count 1 for the offence of assault contrary to section 251 of the Penal Code and in count 2 the offence of grievous harm contrary to section 234 of the Penal Code.
  - c. That, I was sentenced to serve two (2) years imprisonment for the first count of assault and six (6) years for the offence of grievous harm in count 2 on 13<sup>th</sup> October, 2022 by Honourable Karanja at the Chief Magistrate's Court at Naivasha.
  - d. That, I pleaded guilty to the above charges.
  - e. That, I am a pauper hence I pleaded with this Honourable court to waive my court fees.



- f. That, I confirm that all I have here is all true and correct to the best of my knowledge and belief.
3. The application arose out of two criminal cases in the Chief Magistrate’s Court namely, CMCC No. E117 and E118 of 2022. In matter CMCC E117 of 2022, the applicant was charged with the offence of assault contrary to section 251 of the Penal Code. The particulars are that, on 5<sup>th</sup> July 2022, at Kinamba area in Naivasha sub-County within Nakuru County, the applicant unlawfully assaulted Daniel Ndungu Ngure thereby occasioning him actual bodily harm.
  4. In criminal case CMCC No. E118 of 2022, the applicant was charged with the offence of grievous harm contrary to section 234 of the Penal Code. The particulars are that, on the 13<sup>th</sup> July 2022, at Kinamba Area in Naivasha sub-County within Nakuru County, the appellant unlawfully did grievous harm to Simon Muniu Kungu.
  5. He was convicted on his own plea of guilty in both matters and sentenced to serve two (2) years imprisonment on the charge of assault and six (6) years on the charge of grievous harm.
  6. As aforesaid, he seeks that, the sentence in the two matters run concurrently. It suffices to note that, section 37 of the [Penal Code](#) states:

“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.”
  7. Furthermore, concurrent sentences are suitable for related offences arising from some facts, while consecutive sentences are appropriate for unrelated offence or when the court believes concurrent sentences would not adequately reflect criminality.
  8. To decide on concurrent sentences, the court should consider various factors, including but not limited to crime severity and aggravating or mitigating factors.
  9. However, the court is only well placed to decide whether the sentences should run concurrently or consecutively where the accused is charged with more than one offence in the same charge sheet. However, where the accused is charged in two different matters arising from different circumstances, the sentences are distinct and cannot run concurrently.
  10. In the instant matter, the offences were committed on different dates, in CMCC No. E117 of 2022 on 5<sup>th</sup> July 2022, and in CMCC No. E118 of 2022 on 13<sup>th</sup> July, 2022. The complainants in the matters are different. In CMCC No. E117 of 2022, it is Daniel Ndungu Ngure, and in CMCC No. E118 of 2022, it is Simon Muniu Kungu.
  11. Furthermore, the circumstances of the offence as evidenced by the various injuries the victims sustained revealed serious injuries occasioned to both, in particular the 2<sup>nd</sup> victim in CMCC No. E118 of 2022. The weapon used to inflict the injuries of Ngure was a stone aimed at his nose, and the victim Kungu was hit on the head until he became unconscious. Obviously, the afore factors are aggravating and do not render the applicant available to the benefit for sentence review.



12. Finally, the court can only review a sentence that is incorrect or improper. The sentences meted out in both matters is proper in that the law provides for sentences for assault and grievous harm as follows:

Section 251 of the Penal Code states that:

Any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years.

Further, section 234 of the *Penal Code* provides:

Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.

13. The upshot of the aforesaid is that, the application is dismissed for want of merit or lack of it.

**DATED, DELIVERED AND SIGNED THIS 2<sup>ND</sup> DAY OF MAY, 2024.**

**GRACE L. NZIOKA**

**JUDGE**

In the presence of:-

The applicant present virtually

Mr. Abwajo for the respondent

Ms Ogutu: Court Assistant

