



REPUBLIC OF KENYA



**Nyangwechi v Republic (Criminal Revision E005 of 2023)  
[2024] KEHC 8476 (KLR) (4 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8476 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E005 OF 2023**

**WA OKWANY, J**

**JULY 4, 2024**

**BETWEEN**

**ROBERT NYANGWECHI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the Judgment and Sentence at the Chief's Magistrate's Court at Nyamira in Criminal Case No. 779 of 2018 by Hon. M. C. Nyigei Principal Magistrate on 26th July 2022)*

**RULING**

1. The Applicant was convicted for the offences of burglary and stealing contrary to Section 304 (2) and 279 (b) of the Penal Code, Possession of Public Stores contrary to Section 324 (1) (3) as read with Section 36 of the Penal Code and unlawful possession of an identity card belonging to another person contrary to Section 14 (1) of the Registration of Persons Act. The trial court sentenced him to serve seven (7) years imprisonment for the first charge (Count 1), 1-year imprisonment for the 2<sup>nd</sup> charge (Count 4) and 1-year imprisonment for the third count (Count 6).
2. The Applicant filed the instant application seeking a revision of his sentence.
3. The Constitution of Kenya outlines the rights of an accused person under Article 50, particularly: -
  - (2) Every accused person has the right to a fair trial, which includes the right-
    - (q) if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.
4. The High Court also draws its powers of revision from Article 165 of the Constitution which stipulates as follows: -
  - (1) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior court.



5. The *Criminal Procedure Code*, Cap 75 outlines the manner in which the revisionary powers are to be exercised as follows: -

362. Power of the High Court to Call for Records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.

364. Powers of the High Court on Revision

(1) In the case of a proceeding in a subordinate court, the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may –

- a. In the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- b. In the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defense:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed that might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding a sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

6. In the instant application, the court is required to consider the said sentence passed by the trial court in order to satisfy itself as to its correctness, legality and appropriateness.

7. The Applicant herein was charged with several offences but he was convicted only on 3. The trial court, when sentencing the Applicant, stated that the sentences were to run consecutively. The *Criminal Procedure Code* at Section 14 states thus: -

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.



8. 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.”

9. The *Judiciary Sentencing Policy Guidelines* (2016) also outlines circumstances when a court should impose consecutive or concurrent sentences. They provide thus: -

7.13. Where the offences emanate 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 sentence should run consecutively.

7.14. The discretion to impose concurrent or consecutive sentences lies in the court.

10. I have considered the offences for which the Applicant was charged with and convicted of by the trial court. It is not clear if the offences occurred in one transaction or in different transactions. I am satisfied that the trial court properly considered the facts of the case and exercised its discretion in deciding to have the sentences would run consecutively.

11. I also note that the Applicant was not a first offender and that he was already serving another sentence in another case where he was convicted for the offence of defilement. In the circumstances of this case, I find no reason to interfere with the trial court’s discretion in imposing the sentences and the order that they run consecutively. This court however hastens to add that the sentences shall be computed and shall run from the date of arrest being 5<sup>th</sup> June 2018 as indicated on the charge sheet, in line with Section 333 (2) of the *Criminal Procedure Code*.

12. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 4<sup>TH</sup> DAY OF JULY 2024.**

**W. A. OKWANY**

**JUDGE**

