



REPUBLIC OF KENYA



**Mulatya v Republic (Criminal Revision Application 062 of 2022)  
[2023] KEHC 22192 (KLR) (16 February 2023) (Judgment)**

Neutral citation: [2023] KEHC 22192 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KITUI  
CRIMINAL REVISION APPLICATION 062 OF 2022  
F WANGARI, J  
FEBRUARY 16, 2023**

**BETWEEN**

**BENARD MULATYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

1. The applicant herein was charged with the following offences and sentenced as hereunder;
  - a. In Count 1; House breaking contrary to section 304 (1) (a) and stealing contrary to section 279 (b) of the *Penal Code*. He was sentenced to a fine Ksh. 60,000 in default 2 years imprisonment.
  - b. Count 2; Resisting arrest contrary to section 103 (a) of the *National Police Act*. He was sentenced to a fine of Ksh. 10,000 in default 6 months imprisonment.
  - c. Count 3; Assaulting a police officer contrary to section 103 (a) of the National Police Service. He was sentenced to a fine of Ksh. 30,000, in default 1 year imprisonment
2. The appellant has now moved this court via an application filed on 28/6/2022, seeking to have the sentences above which run consecutively be revised to an imprisonment term that runs concurrently. The application was not opposed.
3. Section 14 (1) of the *Criminal Procedure Code* on sentences in cases of conviction of several offences at one trial, states;

“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."

4. In *Peter Mbugua Kabui v Republic*, the Court of Appeal stated;

"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 for the conviction in the two counts"

5. In the matter before me, the offences committed by the applicant were committed at the same time and in a single act. I am therefore guided by in para 3 and 4 above.

6. From the above discussion, I find that the application has merits. The sentence passed by the trial court shall therefore run concurrently. The imprisonment term is to run from the date of sentence.

**DATED AND DELIVERED AT MOMBASA THIS 16<sup>TH</sup> DAY OF FEBRUARY, 2023.**

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**F. WANGARI**

**JUDGE**

