



**Mungai v Republic (Miscellaneous Criminal Application E233 of 2022)  
[2023] KEHC 2383 (KLR) (Crim) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2383 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
MISCELLANEOUS CRIMINAL APPLICATION E233 OF 2022  
JM BWONWONG'A, J  
MARCH 16, 2023**

**BETWEEN**

**JOSEPH KAMAU MUNGAI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application for revision of the sentence delivered by Hon. B.M Ekhubi, C.M, on 14th July 2022 in Milimani Chief Magistrate's Court Criminal Case No. E661 of 2022 Republic vs Joseph Kamau Mungai))*

**RULING**

- 1 The applicant was charged and convicted on his own plea of guilty for the following offences:
- 2 In Count one, personation contrary to section 382 (1) as read with section 36 of the [Penal Code](#);
- 3 In Count two, stealing contrary to section 268 (1) as read with section 275 of the [Penal Code](#);
- 4 In Count three, personation contrary to section 382 (1) as read with section 36 of the [Penal Code](#)
- 5 In Count 4 attempted stealing contrary to section 268 (1) as read with 275 and 389 of the [Penal Code](#).

**Sentence**

- 6 In count I the applicant was sentenced to 2 years imprisonment.
- 7 In count 2 He was sentenced to a fine of Kshs. 300,000 in default 2 years imprisonment.
- 8 In count 3 the applicant was sentenced to 2 years imprisonment.
- 9 In count 4 he was sentenced to a fine of shs 300,000/- in default 2 years imprisonment.



- 10 The sentences were ordered to run consecutively.
- 11 He has now approached this court seeking a review of his sentence.
- 12 The grounds raised in his application and the supporting affidavit are as follows. That he is 76 years old, sickly with chest problems and his continuous incarceration will cause irreparable damage to his health. He pleaded guilty and is remorseful.
- 13 He urged the court to review his sentence to run concurrently.
- 14 During the hearing of his application, he made oral submissions. He urged the court to consider a non-custodial sentence.
- 15 Ms. Ntabo, learned prosecution counsel submitted that the sentence meted out is proper.

### **Issues for determination**

- 16 Having considered the application, the oral submissions, and the applicable law, the issue for determination is whether the applicant has made out a case for the grant of the orders sought.

### **Analysis and determination**

- 17 The instant application is premised on sections 362 and 364 of the *Criminal Procedure Code*. Section 362 gives the High Court the jurisdiction to call for and examine the record of any criminal proceeding before any subordinate court to satisfy 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. Section 364 on the other hand provides for the powers of the High Court on revision.
- 18 The application is founded on the grounds that the trial court directed his sentence to run consecutively and not concurrently. Further, that he is of advanced years and sickly. He now seeks to be released. The Court of Appeal in *Bernard Kimani Gacheru vs. Republic* [2002] e-KLR stated that:

It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

- 19 I find that the trial court considered the circumstances of the case and meted out the sentence at its discretion. The sentence imposed was therefore proper in the circumstances. On whether they should run consecutively, section 14 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya 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.”



20 It is therefore lawful to pass consecutive sentences in the circumstances prescribed by section 14. In *Peter Mbugua Kabui vs Republic* [2016] e-KLR 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.

21 I have also considered the *Sentencing Policy Guidelines* which contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide as follows:

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.

22 The trial court was satisfied in that case that the applicant committed a series of offences, and did not err in ordering consecutive terms in respect of the imprisonment of the applicant.

23 The upshot of the above analysis is that the application for revision of the sentence consequently fails. It is hereby dismissed.

**JUDGEMENT SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

**J M BWONWONG'A**

**JUDGE**

**In the presence of-**

Mr. Kinyua: Court Assistant

The appellant in person

Mr. Mutuma for the respondent.

