



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Revision E268 of 2021)
[2023] KEHC 3290 (KLR) (19 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3290 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E268 OF 2021
PM MULWA, J
APRIL 19, 2023**

BETWEEN

SYLVIER WANJA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision of the order of Hon B M Ekhubi PM dated April 10, 2019
in Criminal Case No 221 of 2018 at the Chief Magistrates Court at Thika)*

RULING

1. Sylvier Wanja Mwangi, the applicant herein, has applied for revision of sentence following her conviction and sentence in Thika Criminal Case No 221 of 2018. In that case, she was charged with two counts of stealing contrary to section 275 of the *Penal Code*. She initially pleaded not guilty to the charges. However, when the matter came up for hearing on April 2, 2019, she changed her plea and pleaded guilty to the charges. She was convicted on her own plea and was on April 10, 2019 sentenced as follows:

Count Ksh 150,000 in default 2 years imprisonment
1 –
Count Ksh 300,000 in default 2 years imprisonment
2 –
Sentences to run consecutively upon her serving her present sentence in criminal case no 525 of 2017.
2. By her undated application filed in Court on November 17, 2021, the applicant asks the court to review the sentence and impose a concurrent sentence. That she is 65 years old and sickly and that she deserves a second chance to take care of her grandchildren. The applicant further avers that while in prison she has acquired vital skills in bead work, pottery works and fibre work.



3. On February 28, 2023 the applicant submitted orally that she was diabetic, had developed eye problem and that her body was weak in addition to having arthritis. She pleaded with the court to forgive her.
4. The State/Respondent through learned counsel Mr Gacharia did not oppose the application adding that the applicant was a senior citizen and had spent a number of years in prison.
5. Sentencing is a discretion of the Trial Court as was held in *Bernard Kimani Gacheru vs Republic* [2002] eKLR and can only be interfered with in terms of the law as was stated in *Evans Kalo vs Republic* (2020) eKLR as follows;

“...it is therefore clear that those powers are limited to what the statute and the Constitution of Kenya under Article 165 (6) provides; that 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.”

6. The jurisdiction of this court to determine this matter emanates from Section 362 of the *Criminal Procedure Code* (CPC) which provides thus:

“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.”

7. Further, Section 364 of the *CPC* provides:

“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, in the case of any other order other than an order for acquittal, alter or reverse the order.”

8. The issue that I need to consider therefore is whether to review the order of the trial court that the sentences of two years on each of the two counts should run consecutively.

9. 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”.

10. It is therefore lawful to pass consecutive sentences in the circumstances prescribed by section 14. In *Peter Mbugua Kabui vs 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”.



Determination

11. The Court has considered the application together with the supporting affidavit and the oral and submissions.
12. 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.
13. In this case the counts show that the offences were committed on different dates and against one complainant hence proper for the sentence to run consecutively. The offences were not committed in a single transaction. Furthermore, in count I the trial Magistrate ordered payment of a fine of Kshs 150,000/- in default imprisonment for a period of 2 years and hence the sentence cannot run concurrently with the other sentence in Count II.
14. In [Mohammed Reza Nazari Sarabi vs Republic](#) [2020] eKLR, Onginjo J stated that: -

“... in the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a sentence in another count. The trial Magistrate could not and this court cannot order for default sentences in the 2 counts to run concurrently” – [See *Paul Tatizo Musai & another vs Republic* [2008] eKLR].
15. The court is satisfied that as the offences were committed at different times and dates, though against the same complainant, the trial court not err in ordering consecutive imprisonment terms for the two counts.
16. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision, the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice.
17. This court appreciates that the applicant was to serve a total of four years for the two counts of offences. While she was sentenced on April 10, 2019, the learned trial Magistrate tied the commencement of the prison term to completion of a prison term in Criminal Case No 525 of 2017.
18. Information provided by the prison authorities indicate that the prison sentence for the applicant in Cr Case No 525 of 2017 terminated on June 20, 2022.
19. By requiring that the four-year imprisonment term herein commence on June 20, 2022 amounted to an irregularity which this court is called upon to correct. The applicant during mitigation told the court that she was diabetic and had high blood pressure and prayed for leniency.

Disposition

20. Accordingly, the order that the sentences in the instant case be served upon completion of the applicant’s sentence in Criminal Case No 525 of 2017 is hereby set aside and the same is substituted



with an order that the sentences shall run from April 10, 2019 the date when the learned Magistrate pronounced the sentence.

RULING DELIVERED VIRTUALLY, SIGNED AND DATED AT KIAMBU THIS 19TH DAY OF APRIL, 2023.

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P M MULWA

JUDGE

In the presence of:

Court Assistants: Mr Kinyua/Duale

Applicant: Present -virtually from Langata W/P

Mr Muriuki: For State/Respondent

