



REPUBLIC OF KENYA



**KENYA LAW**  
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**Anyango v Republic (Criminal Revision E252 of 2022)  
[2023] KEHC 3998 (KLR) (Crim) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 3998 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E252 OF 2022**

**LN MUTENDE, J**

**MAY 8, 2023**

**BETWEEN**

**SOPHY ANYANGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Sophy Anyango, the applicant, was jointly charged with another in Kibera CMCR 1156 of 2020 and convicted for the offence of Stealing contrary to Section 268(1) as read with Section 275 of the [Penal Code](#). She also faced another count of Having suspected stolen property contrary to Section 323 of the [Penal Code](#).
2. Particulars of the charges against the applicant and the other individual were that:

On the night of 29/9/2020 and 30/9/2020 within Nairobi County they jointly stole Ksh 720,000/= the property of Jared Okeyo Oduong, and, on the date of arrest, the 19<sup>th</sup> October, 2020 at Zimmerman Kasarani within Nairobi County having been detained by Number 237xxx PC Geoffrey Macharia and Number 112xxx PC Abdihakim as a result of exercise of powers conferred under Section 26 of the CPC had in her possession a mobile phone make Techno Odel Imei 3580050868xxxxx reasonably suspected to have been stolen .
3. Following the conviction, the applicant was sentenced to pay a fine of Ksh 500,000/= and, in default to serve 2 years imprisonment on the Count of Stealing; and, Ksh.50,000/= and, in default, to serve one-year imprisonment for Having suspected stolen property, respectively. The sentences were directed to run consecutively.



4. The applicant seeks review of sentence and subsequent orders. She also prays for the period spent in remand custody to be considered.
5. The substratum of the application is that she is a mother of two (2) children who continue to suffer while she is incarcerated and that she has spent one and a half years in custody .
6. The State sought leave to respond but failed to comply hence rendering the application unopposed.
7. The High court has supervisory jurisdiction over proceedings and orders of a subordinate court. This power is espoused in Section 362 of the [Criminal Procedure Code](#) (CPC) which provides as follows:  
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.
8. In this instance the court would be required to ascertain whether the sentence / order of the subordinate court is correct, legal or proper.
9. Apart from the supervisory powers granted to this court, It also has power to interrogate whether the sentences meted out by courts below it are within the law. In the case of [Bashir Nyangweso Wanzetse V Republic](#)[2013] eKLR which is persuasive, the High court held that :-

“it is important to point out at the outset that as a general rule, sentencing is always at the discretion of the trial court. It is now settled law that a court exercising supervisory jurisdiction over the trial court which includes this court’s revisional jurisdiction cannot review or alter the sentence of the trial court unless it was satisfied that the sentence was either illegal or that in passing it, the trial court considered the wrong legal principles or considered irrelevant factors. The court can also revise the sentence imposed by the trial court if it was convinced that the sentence was harsh and manifestly excessive in the circumstances of the case.”

See: *Ogolla S/O Owuor v Republic*, 1954 EACA 270; [Macharia v Republic](#), [2003] KLR 115.

10. The main argument herein is whether sentences meted out should run concurrently or consecutively.
11. Section 14 of the [Criminal Procedure Code](#) provide 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.
  - (2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.



12. The Court of Appeal in *Peter Mbugua Kabui v Republic*, [2016] eKLR held that:
- “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”
13. The Judiciary sentencing policy guidelines also sets out circumstances in which a court can direct sentences to run either concurrently or consecutively. At paragraph 7.13 it states that:
- “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.”
14. The guidelines also clarify that whether the sentence should run concurrently or consecutively is a matter of discretion. This being the case, the limited power of a revisionary court cannot be stretched to question the trial court’s discretion. This is an issue that ought to be taken on appeal for the court to examine the evidence and circumstances in totality.
15. On the other hand, the trial court commits an illegality where it fails to consider primary principles which are already settled. A challenge on legality is also an issue that can be addressed in revision as set out under Section 362 of the *Criminal Procedure Code*.
16. Looking at the charge sheet, the applicant was convicted on two counts, offences that were committed on different dates and were not related. It cannot be stated that they occurred in the same transaction. That being the case, there was no error to be corrected in the finding that the sentence should run consecutively.
17. On the issue of the sentences meted out, Section 268 as read with Section 275 of the *Penal Code* provide thus:
- “...Any person who steals anything capable of being stolen is guilty of the felony termed theft and is liable, unless owing to the circumstances of the theft or the nature of the thing stolen some other punishment is provided, to imprisonment for three years.”
18. The provision of the law does not provide for a fine, but, the trial court having opted to impose a fine should have been guided by Section 28 of the *Penal Code* which stipulate thus:
- (2) In the absence of express provisions in any written law relating thereto, the term of imprisonment or detention under the Detention Camps Act (Cap. 91) ordered by a court in respect of the non-payment of any sum adjudged to be paid for costs under section 32 or compensation under section 31 or in respect of the non-payment of a fine or of any sum adjudged to be paid under the provisions of any written law shall be such term as in the opinion of the court will satisfy the justice of the case, but shall not exceed in any such case the maximum fixed by the following scale—
- .....
- Exceeding Sh.15,000 but not exceeding Sh.50,000..... 6 months.



Exceeding Sh. 50,000.....12 months.

19. Having imposed a fine of Ksh.500,000 the court should have imposed a default sentence of one-year imprisonment. Therefore the 2-year period was erroneous and an illegality that must be corrected.
20. On the offence of having suspected stolen property, Section 325 of the *Penal Code* provides:
  323. Person suspected of having or conveying stolen property Any person who has been detained as a result of the exercise of the powers conferred by section 26 of the *Criminal Procedure Code* (Cap. 75) and is charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who doesnot give an account to the satisfaction of the court of how he came by the same, is guilty of a misdemeanour.
21. Mostly, misdemeanors are punishable by less than one-year imprisonment. The court having opted to sentence the offender to pay a fine of Ksh. 50,000/= the default period should have been six (6) months. Similarly, it was an error that calls for correction.
22. The upshot of the above is that default sentence imposed on both counts is set aside and substituted with a default sentence of one-year imprisonment for the offence of stealing and six (6) months imprisonment for the offence of having suspected stolen property. For avoidance of doubt, the applicant shall be required to pay a fine of Ksh. 500,000/= and, in default to serve one-year imprisonment; to pay Ksh 50,000/= and in default to serve six (6) months imprisonment. Sentences that will run consecutively with effect from the 12<sup>th</sup> day of May,2022.
23. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI,**

**THIS 8TH DAY OF MAY, 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Applicant

Mr. Kiragu-ODPP

Court Assistant-Evance

