



**Wanjau alias Josphat Mwaniki Kairu v Republic (Miscellaneous Criminal Application E087 of 2023) [2024] KEHC 12513 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12513 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E087 OF 2023**

**JM NANG'EA, J  
OCTOBER 17, 2024**

**BETWEEN**

**DAVID KIRIMIRE WANJAU ALIAS JOSPHAT MWANIKI  
KAIRU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By this application dated 3<sup>rd</sup> July, 2023, the applicant prays that his sentences imposed in the Chief Magistrate's Court at Nakuru (Criminal Case No. 1462 of 2018) should be run concurrently and further that this court does invoke Section 333 of the *Criminal Procedure Code*. He states that he was in remand custody from 19<sup>th</sup> August 2019 to 15<sup>th</sup> September 2021 after arrest when he was released on bond.
2. I have perused the trial court's record being Criminal Case File No. 1462 of 2019. The Applicant was convicted on five (5) counts to wit; Obtaining money by false pretences Contrary to Section 313 of the *Penal Code* (Count I) and Making documents without authority Contrary to Section 357 (a) of the *Penal Code* (Counts II, III, IV, V and VI). He was then sentenced on 11/5/2022 to a fine of Kshs. 300,000/= on Count I in default of which he would serve out three (3) years imprisonment. Regarding Counts II, III, IV, V and VI the Applicant was fined Kshs. 50,000/= on each of the counts or serve out a period of one (1) year in prison on each of these counts. The records of the trial court does not indicate whether the custodial sentences would run consecutively or concurrently. Notwithstanding, it would appear going by the application before this court that the sentences are being served consecutively hence the Applicant's plea that they be served concurrently.
3. Indeed the Law is that where there are more than one (1) count in a charge as is the case here, and fines are imposed as alternatives to custodial sentences, then the custodial sentences shall be served out consecutively, if the fines are not paid. In this case, the learned trial magistrate should therefore have



given this direction as part of the sentencing. This court accordingly formally directs that the custodial sentences meted out against the appellant run consecutively seeing that the imposed fines were not paid. This disposes of the first limb of the application.

4. The Applicant also wants the court to invoke the provisions of Section 333 of the *Criminal Procedure Code*. This statutory provision in Sub Section 2 provides;

“where a person sentenced under Sub Section (1), has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

5. The trial court’s record is silent as to whether this enactment was complied with. The charge sheet shows that the Applicant was arrested on 24/5/2018 and produced in court on 28/5/2018. He was granted bond/bail but he couldn’t comply until 15<sup>th</sup> September 2021. He was therefore in prison, during this period awaiting trial. By dint of Section 333 (2) of the *Criminal Procedure Code* “*supra*”, the period should be taken into account in executing the imposed prison term.
6. Consequently, it is directed that the officer in charge of the concerned Prison will discount the period between 19<sup>th</sup> August 2019 and 15<sup>th</sup> September 2021, in computing the length of the applicant’s prison term.
7. Ruling accordingly.

**J. M. NANG’EA, JUDGE.**

**RULING DELIVERED THIS 17<sup>TH</sup> DAY OF OCTOBER 2024 IN THE PRESENCE OF:**

The state,

The Applicant, present

The Court Assistant, Jeniffer

**J. M. NANG’EA, JUDGE.**

