



Githua v Commissioner General of Prisons & 2 others (Petition 44 of 2019) [2024] KEHC 15642 (KLR) (9 December 2024) (Ruling)

Neutral citation: [2024] KEHC 15642 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
PETITION 44 OF 2019
MW MUIGAI, J
DECEMBER 9, 2024
REVISION NO E 0132 OF 2024**

BETWEEN

JULIA WANGECI GITHUA PETITIONER

AND

COMMISSIONER GENERAL OF PRISONS 1ST RESPONDENT

DIRECTOR OF PUBLIC PROSECUTION 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

RULING

Application

1. On 12/9/2023 the Applicant, Julia Wangeci Githua, vide letter to Deputy Registrar Machakos High Court and sought clarification of Criminal Case No 658 of 2012 IRO 849/2019/LS Julia Wangechi Githua. The Letter read in part as follows;

“I was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code and was sentenced to 10 years on 24/2/2012. In Misc Criminal Application No E045 of 2019 in Machakos High Court Hon. Justice G.V. Odunga gave Ruling that this Particular sentence should run from the date of Arrest (25/9/2012-24/2/2015) I am therefore seeking the Court’s directions on this matter as to whether am still serving the sentence or the time that I have spent in prison is over since the Judge clearly stated that ‘ The period spent should be directed to the longest sentence in (Paragraph 3)which is 10 years.

According to the said original Ruling my sentence ought to have ended since I have been in prison for 11 years and 2 months.



I am requesting for direction since as at now I am serving the said sentence because according to Prison authorities I was convicted on different Counts & different Courts.....Am serving all these sentences consecutively unless the Court directs otherwise.”

2. On 9/5/2024 the Applicant made an oral application on computation of sentence under Section 333(2) CPC and proposed that the sentences in various cases, this Court should order the sentences to run concurrently.
3. Corporal Cynthia Ahuda of Langata Women Prison stated that they filed Replying Affidavit and stated that the Prison Department complied with Judgment of G. V. Odunga 31/9/2020 and the Inmate has several cases with different Courts and sentences are to run consecutively which are high-lighted in the Report.
4. Julia Wangeci Githua said that in 2019 she was before G.V.Odunga and judgment was delivered on 30/9/2020. Lady Justice Lilian Mutende came to Prison and she raised the issue of sentencing and she was advised to write to Court for clarification.
5. The ODPP undertook to obtain the various cases relating to the Inmate Julia Wangechi Githua and needed and took 1 month.
6. On 12/11/2024, ODPP presented copies of the judgments hereinbelow and relied on the Prisons Department Report of 31/7/2024 which was presented in Court earlier and submitted that Machakos High Court lacked jurisdiction to deal with cases of Kajiado High Court.

Court Record

7. The Applicant also filed Application for Review of Case 658 of 2012 seeking the Court to review sentence in terms of Article 50 (2) of *the Constitution* and Article 20 (3) (b) of *the Constitution*, the Court to make interpretation that most favours the Applicant and apply Bill of Rights in enforcement of a right or fundamental freedom.
8. The Petitioner Julia Wangeci Githua filed a Petition that while serving custodial sentences over several cases and deposed as follows;
 - a. Criminal Case 658 of 2012 at Mavoko Law Courts charged with robbery with violence C/S 296 (2) of the Penal Code and was convicted and sentenced to death penalty.
 - b. Criminal Appeal 68 of 2016, Machakos High Court, the sentence in Criminal Case 658 of 2012 death penalty was set aside and instead 10 year sentence was imposed.
 - c. Criminal Case 544 of 2012 Machakos Magistrate’s Court charged with robbery with violence c/s 296 (2) of the Penal Code and was sentenced to 5 years imprisonment.
 - d. Criminal Case 1440 of 2012 Machakos Magistrate’s Court charged with stupefying in order to commit a felony c/s 230 of the Penal Code and was convicted and sentenced to serve 7 years imprisonment.
9. The Petitioner challenged Sections 37 of Penal Code Section 14 Criminal Procedure Code Section 92 (1) *Prisons Act* & Section 333(2) Criminal Procedure Code [not being applied in computing sentence] as being contrary to fair trial.
10. Vide the Judgment in Machakos Petition No.44 of 2019 delivered on 30th September, 2020 by Hon. G. V. Odunga – Judge (as he then was) the Court held in part;



In Para.87:

“I find no contravention of *the Constitution* the complaint by the Petitioner that there is a prima facie inconsistency between Section 37 of the Penal Code and/or Section 92 (1) of the *Prisons Act* on one hand and Section 333(2) of the Criminal Procedure Code on the other hand cannot be said to be without any merit. Accordingly, I direct the Deputy Registrar of this Court to serve a copy of this judgment on the Hon. Attorney General with a view to appropriate steps being taken to reconcile the said provisions”

Para.88

“I must however appreciate the efforts of the parties herein and their legal advisers for raising the issues raised herein which issues cannot certainly be termed as frivolous.”

Para.89

“Therefore, having held that the period spent in custody should be directed at the longest sentence, since the Petitioner was arrested on 25th September, 2012 and the longest sentence she is serving is 10 years imposed upon her in Mavoko Criminal Case No. 658 Of 2012, the period of the said sentence shall run from 25th September, 2012. Otherwise, I find no merit in this Petition which I hereby dismiss but with no order as to costs.”

11. The Applicant Julia Wangechi Githua filed Appeals in Criminal Case 1440 of 2012 & Criminal Case 544 of 2012 & Criminal case 658 of 2012. The Applicant through Counsel submitted that the sentence Criminal Case 1440 of 2012 & Criminal Case 544 of 2012 were subject to remission and had been given remission & Criminal Case 658 of 2012 where death penalty was replaced by 10 year sentence is now subject to remission.
12. Vide judgment Machakos Criminal Appeal Nos. 27 of 2017 and 47 of 2017 on the above appeals by Hon. G. V. Odunga – J (as he then was) delivered on 1st October, 2019 held in part:

Para.19

“It was suggested that in her decision in Criminal Appeal No.68 of 2016, Nyamweya, J’s mind was not drawn to the other existent convictions and sentences. In her judgment, the learned judge expressed herself inter alia as follows:

“After considering the appellant (sic) mitigation and considering that the Appellant has previous convictions, I sentence the Appellant to serve 10 years imprisonment for conviction for count I of robbery with violence, and 10 years imprisonment for conviction for count II of robbery with violence, which terms of imprisonment shall run concurrently.”

Para. 20

It is therefore clear that the learned judge was well aware of the existence of the other convictions and in meting out the sentence took them into account.

Para.22.

Therefore, nothing prevents the appellant from petitioning the Commissioner General of Prisons to exercise his powers pursuant to the above provisions if she feels that her status constitutes special grounds for further remission over and above that contemplated under



section 46(1) of the Act. That, however, is not a matter for this court as it involves the discretionary powers of the Commissioner General of Prisons.

Para. 23.

It is therefore my finding that these consolidated appeals lack merit and they are hereby dismissed.

13. Vide the Judgment of Kajiado Criminal Appeal No. 24 of 2015 (from Principal Magistrate Kajiado Criminal Case 803 of 2021) and sought that the sentence therein and of Criminal Case 544 of 2012 and other cases in Machakos and Mavoko to run concurrently. by Hon. R. Nyakundi- J delivered 16th May, 2016 the Court held in its decision that;

“Having considered the appeal, submissions by Appellant and Respondent’s Counsel and mitigating factors as stated by the Appellant, I see no merit on interfering with sentence imposed against the Appellant.

In my Judgment I accordingly affirm the decision of the lower Court and decline to set aside the sentence. I further dismiss the Appeal to order for consolidation of sentences in Criminal Case No. 803 of 2012 to run concurrently with other sentences in Criminal case Nos 594 of 2012 and No. 1440 of 2012 at Machakos and Mavoko Courts whose appeals are not a subject matter before this Court.

The upshot appeal is hereby dismissed”

14. Vide the Judgment in Machakos Criminal Appeal No.68 of 2016 from the Criminal Case 658 of 2012 where the Appellant was sentenced to death penalty; by Hon. P. Nyamweya – LJ (as she then was) delivered on 21st March 2018 the Court held in part;

“This Court therefore has two options; to remit the matter back to the Trial Court to sentence the Appellant afresh or alter sentence in line with Section 354 of the Criminal Procedure Code.

In order to avoid parallel appeals proceedings in the High Court against the new sentence that may be imposed by the Subordinate Court, and at the same time in the Court of Appeal from the decision of this Court in this appeal. It is in my view more appropriate that this Court imposes the new sentence on the Appellant.

Consequently, I uphold the conviction of the Appellant on the two counts of robbery with violence contrary to Section 296 (2) of the Penal Code, but set aside the sentence of death imposed on the Appellant. The Appellant will accordingly make her plea in mitigation before I consider the appropriate sentence.”

Ruling on Sentence- After considering the Appellant’s mitigation and Appellant’s previous convictions, I sentence the Appellant to serve 10 years imprisonment.....

15. Vide the Ruling of Machakos Criminal Revision No. E007 of 2020 from the Criminal case 1440 of 2012 Machakos Magistrate’s Court by Hon. D. K. Kemei – J delivered on 12th March, 2021 the Court held that;

Para.28

“Having established that the prayers sought in the petition and the present matter are the same and having seen that Odunga J sitting in a court of similar status heard and determined



the question of the sentence which the Applicant wants reduced, it can be deduced that this Application holds no water as the Applicant is out on a forum shopping. The case before this court appears to be an attempt by the Applicant to bring the same cause of action as previously decided by Odunga J, albeit with a “few cosmetic changes.

Para.29

The issues in question were heard and determined by a court of competent jurisdiction and therefore the Applicant can only go to the Appellate Court if she is dissatisfied with the decision of the court.

Para.30

“As regards the fourth issue and in view of the foregoing observations, it is my finding that the Applicant’s application for review of sentence lacks merit. The same is dismissed.”

16. Vide the Judgment of the Machakos Misc. Cr. Application No. E045 of 2019 by Hon. V. Odunga – J (as he then was) reiterated the Judgment of 13/9/2020 in Petition No 44 of 2019 and delivered on 29th November, 2021 the Court held in part;

Para.8

“That being the position this Court is functus officio in so far as the application of Section 333(2) aforesaid to Criminal Case No. 544 of 2012 is concerned. Dealing with the said principle, the Supreme Court in *Raila Odinga & 2 Others vs Independent Electoral & Boundaries Commission & 3 others* [2013] eKLR cited with approval an excerpt from an article by Daniel Malan Pretorius entitled “the origins of the Functus Officio Doctrine, with special Reference to its application in Administrative Law”

Para.10.

“Consequently, this application is incompetent and is hereby struck out.”

17. Upon the perusal of the Court file on 13/05/2024 this Court directed the Prisons Department to file a Report on computation of sentence in compliance with the Judgment of Hon. Odunga, J (as he then was) of 30/09/2024.
18. The Prisons Department filed their comprehensive Report dated 31/07/2024 in Court on 19/09/2024.

Determination

19. Having outlined the Applicant’s application and the various proceedings and appeals with regard to the Applicant’s /Inmate’s criminal cases the issue for determination is twofold;
 - a. Whether this Court is clothed with competent jurisdiction at this stage to address and conclusively determine the issue of concurrent and/or consecutive sentences
 - b. Whether the cases outlined and appeals thereof the issue at hand is raised for the 1st time and merits grant of concurrent sentences to all cases by the Applicant.

Jurisdiction

20. The High Court has unlimited original and appellate jurisdiction in criminal matters vide Article 165 of *the Constitution*.



21. The High Court has jurisdiction to hear Appeals from Magistrate's Courts vide Section 347 (2) CPC.
22. The High Court exercises supervisory jurisdiction over Magistrates' Courts vide Judicial Review of Revision Section 362 CPC

The Magistrate Court/High Court may exercise supervisory role over prisons as Visiting Justices to Prisons Section 72 (2) *Prisons Act*. The role extends to inspecting the Prison, assessing the living conditions and receiving complaints from prisoners. The Magistrate is also required to determine whether the Prisons comply with the *Prisons Act* the Rules made thereunder and Prison Standing orders. Should there be any irregularities, the Magistrate is required to draw the attention of the Officer in Charge to them. Section 72 (4) & 73 of *Prisons Act*. See; The Judiciary Criminal Procedure Bench Book Feb 2018 Pg 123

23. The High Court has jurisdiction in various Criminal processes as outlined above.
24. The Applicant Julia Wangeci Githua sought whether she was entitled to remission and pre-sentence period in custody in computation of her sentence as per judgment of Hon. G.V.Odunga of 30/9/2020 whose import was that this being the longest sentence serving 10 years in Mavoko Criminal Case 658 of 2012, computation would include the pre- sentence period in custody and shall run from 25 /9/2012 the date of her arrest.

Prisons Department Report

25. In the Report dated 31/7/2024 and filed in Court through ODPP on 19/9/2024 it was established that the Petitioner herein Julia Wangechi Githua was convicted in several criminal cases emanating from Machakos, Mavoko and Kajiado Courts being the following;
 - (1) CM's Machakos Criminal Case No.1440 of 2012 – sentenced to serve 7 years, 3 years & 3 years in Counts 1,2 & 3 respectively – sentence to run concurrently. (7 years)
 - (2) PM's Kajiado Criminal Case No. 967/2012 – sentenced to serve 6 months imprisonment for offence of escape from lawful custody (6 months)
 - (3) PM's Kajiado Criminal case No.966 of 2012 – sentenced to serve 3 years and 2 years in Count 1 & 2 respectively – sentence was reduced to period served vide Kajiado Cr. Pet. No.4 of 2018.
 - (4) PM's Kajiado Criminal case No.803 of 2012 – sentenced to serve 7 years for Count 1 & 2 respectively and 10 years (10 years) Through Kajiado High Court Misc App No E008/2020 of 2/8/2023 the presentence period in custody was to be included in computing sentence.
 - (5) PM's Mavoko Criminal Case No.544 of 2012 – sentenced to serve 5 years for the offence of handling stolen property. (5 years)
 - (6) PM's Mavoko Criminal Case 658 of 2012 sentenced to serve death penalty for offence of robbery with violence offence. [The death sentence for the offence of robbery with violence which was later computed to life imprisonment -Judgment of Hon. P. Nyamweya LJ reduced the sentence to 10 years.Hon. Odunga J in Pet. No.44/2019 indicated the 10 years to be computed from the date of arrest from 25/9/2012.] (10 years)
26. Arising from the above, the cumulative sentence in the five files is 32 years and 6 months. The Petitioner was in custody during her trial from 10/08/2012. The High Court ordered that the time she spent in custody during trial should be part of her sentence should be computed from 10/08/2012 consecutively.



27 In line with Section 46(2) of the Prison Act, the inmate is credited with her full remission on admission, which amounts to 10 years and 10 months. If she is not charged with any prison disciplinary offence then her earliest date of release should be 10/04/2034.

Remission

46. Remission of sentence

- (1) Convicted criminal prisoners sentenced to imprisonment, whether by one sentence or consecutive sentences, for a period exceeding one month, may by industry and good conduct earn a remission of one-third of their sentence or sentences.

Provided that in no case shall—

- (i) any remission granted result in the release of a prisoner until he has served one calendar month;
- (ii) any remission be granted to a prisoner sentenced to imprisonment for life or for an offence under section 296(1) of the Penal Code (Cap. 63) or to be detained during the President's pleasure.
- (2) For the purpose of giving effect to the provisions of subsection (1), each prisoner on admission shall be credited with the full amount for remission to which he would be entitled at the end of his sentence if he lost no remission of sentence.
- (3) A prisoner may lose remission as a result of its forfeiture for an offence against prison discipline, and shall not earn any remission in respect of any period—
- (a) spent in hospital through his own fault; or
- (b) while undergoing confinement as a punishment in a separate cell.
- (4) A prisoner may be deprived of remission —
- (a) where the Commissioner considers that it is in the interests of the reformation and rehabilitation of the prisoner;
- (b) where the Cabinet Secretary for the time being responsible for internal security considers that it is in the interests of public security or public order.

28. The Applicant confirmed that remission was granted in cases Criminal Case 1440 of 2012 & Criminal Case 544 of 2012 as deposed in Criminal Appeal No 27 & No 47 of 2017. What was subject to remission was/is Criminal Case 658 of 2012 where death penalty was replaced by 10 year sentence which amounts to The Prisons Department Report confirms remission of 10 years and 10 months globally but it is not clear if the said total remission includes Criminal Case 658 of 2012 whose sentence changed from death penalty to 10 years imprisonment. The Applicant is entitled legally to remission if she is of good conduct with no disciplinary issue while in Prison and the sentences meted out in various cases on appeal the computation included date of arrest and period in custody. The issue shall be raised considered and confirmed by Officer in Charge Langata Women Prison.

Section 333(2) CPC provides;

- (2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.



Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

In *Bethwel Wilson Kibor vs Republic Court of Appeal Eldoret Criminal Appeal 78 of 2009*, the Court of Appeal observed;

The incident took place way back in 1999. The appellant was promptly arrested and taken to court. There were long adjournments due to transfers and/or changes of trial Judges resulting in long incarcerations of the appellant. By proviso to section 333(2) of Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody.

29. Hon G.V.Odunga J (as he then was) directed Petition 44 of 2019 that the period in custody should be directed at the longest sentence of 10 years in Mavoko Criminal case 658 of 2012 to run from 25/9/2012. This Court is not in possession of the Trial Court record that indicates date of arrest & arraignment of the Applicant in Court and how long the Applicant was held in custody during trial before conviction and sentence. The date of arrest , stay in custody until conviction and/or sentencing shall be determined by Deputy Registrar availing the Trial Court file of 658 of 2012 to this Court to confirm computation and compliance of Hon Justice G.V.Odunga's compliance and effecting Section 333(2) CPC to the 10 years and the remission thereof after death penalty was replaced with 10 years imprisonment.
30. The other matters raised by the Applicant were subjected to appeals, and Misc Applications before Kajiado High Court & Machakos High Courts as outlined above. Of Importance, Hon Justice GV Odunga (as he then was) delivered judgment in the same matter thrice, in Appeals 27 & 47 of 2017; in Petition 44/2019 and Application E045 of 2019 and the same/similar issue(s) raised and the Court decided the matter on 30 /9/2020 in Petition 44/2019.

Concurrent & Consecutive Sentencing

31. The Applicant sought this Court's intervention in combining all cases the Applicant was convicted and sentenced for to run concurrently. The Applicant deposed that she has reformed as per the Report filed in Court of 13/8/2020. The Applicant deposed she has served 13 years imprisonment to date and therefore seeks clarification on computation of sentence as per judgment of 30/9/2024 and whether this Court may consolidate the various cases and consider the sentences running concurrently.
32. Sections 12 and 14 of the Criminal Procedure Code provide as follows: -
 12. Any Court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass.
 14. (1) Subject to subsection (3), when a person is convicted over 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 punishments shall run concurrently.
 - (2) In the case of consecutive sentences, it shall not be necessary for the Court, by the reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent impose on conviction of a single offence, to send the offender for trial before a High Court.



33. This is also emphasized Paras. 7.13 and 7.14 of the Sentencing Policy Guidelines, 2016 which provide as follows: -

“7. Where the offence emanates 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 sentences should run consecutively”.

34. In *Nathani v Republic* [1965] EA 777 the court stated as follows regarding defining same transaction in commission of offences [to inform sentencing]

If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.

35. In *Samuel Kinyua Kirimania v Republic* KMBU HCCRA No. 26 of 2017 [2018] eKLR held 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 or transaction, a concurrent sentence should be imposed. However, if the accused commits separate and distinct offences in different criminal transactions, even though the charges are tried in one trial, it is not illegal to mete out a consecutive term of imprisonment (see *BMN v Republic* NYR CA Criminal Appeal No. 97 of 2013 [2014] eKLR).

36. Section 14 of CPC & 37 of the Penal Code prescribe sentencing in circumstances where the offence(s) took place in a series of transactions or in the same transaction then if convicted, the Convict is sentenced at the discretion of Trial Court after taking into account mitigation and previous record of convict to most likely cumulatively concurrent sentence.

37. However, various offences committed either in the same circumstances but unrelated or in different situations upon conviction the Trial Court may mete out consecutive sentence to the multiple offences. Sentencing is the discretion of the Trial Court.

38. In *Bernard Kimani Gacheru vs-Republic* [2002] eKLR the Court observed 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 the 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 stated is shown to exist”

39. Even assuming that this Court ought to intervene and replace consecutive sentence with concurrent sentences in the multiple cases; various cases of the Applicant were tried within Machakos High Court jurisdiction that is Mavoko & Machakos while others were under jurisdiction of Kajiado High Court which clearly this Court cannot broach as the said Court files are not before this Court and this Court



deals with matters arising within Machakos High Court area namely Mavoko, Kithimani & Kangundo in order to hear and determine in terms of re-sentencing.

40. Lastly, the various cases have been subject of appeal, petition on constitutionality of CPC & PC & PA provisions and Misc. Application as outlined above.
41. The Applicant Julia Wangechi Githua filed Appeals in Criminal Case 1440 of 2012 & Criminal Case 544 of 2012 & Criminal case 658 of 2012 & Criminal Case 803 of 2012 .The appeals were heard and determined in Kajiado High Court & Machakos High Court before various Judges of the High Court of Kenya as follows;
 - Criminal Appeal 27 & 47 of 2017 by Hon Justice G.V.Odunga on 1/10/2019 Machakos High Court
 - Criminal Appeal 24 of 2015 by Hon Justice R.Nyakundi on 16/5/2016 Kajiado High Court
 - Criminal Petition 44 of 2019 by Hon. Justice G.V.Odunga on 30/9/2020 Machakos High Court
 - Criminal Appeal 68 of 2016 By Hon Justice P. Nyamweya on 21/3/2018
 - Criminal Revision E 007 of 2020 by Hon D.K. Kemei on 12/3/2021.
42. The applicant has approached this Court again through oral and written letter in the instant matter and also in a related file E132 of 2024 filed Application for Review of Case 658 of 2012 seeking the Court to review sentence in terms of Article 50 (2) of *the Constitution* and Article 20 (3) (b) of *the Constitution*.
43. In Petition 44 of 2019 the Applicant herein asked the Court to look into and declare Sections 37 of the Penal Code; Section 14 of Criminal Procedure Code and Section 92(1) of the *Prisons Act* in conflict with Section 333 (2) of Criminal Procedure Act. The Applicant Petitioner claimed her rights under Articles 25,27,29, 47 48 & 50 (2) of *the Constitution* were violated by the conflicting nature of above challenged provisions of law. With respect the instant Application for review, its content was canvassed and determined in the detailed Judgment of 30/9/2020by a competent Court with equal jurisdiction as this Court. Secondly, review prescribed by Section 364 of CPC was exhausted in Criminal Revision No E007 of 2020 before Hon. D.K.Kemei J again a Court of competent with equal jurisdiction as this Court.
44. The cases sought to be considered so as to have the sentences run concurrently, the offences were not from similar circumstances or of a single transaction instead the court matters are distinct and separate filed, heard and determined in different Courts. The circumstances, transaction, offences are different and parties involved are also different.
45. This Court and the Courts that heard Appeals, Misc. Application Constitutional Petition are of equal, similar and competent jurisdiction and therefore this Court lacks requisite jurisdiction to aid the Applicant have another bite at the cherry. The various Judgments remain valid, legal and regular orders of the Court unless set aside, varied on review or appeal in the Court of Appeal.
46. To consider the same issue again of combining all sentences to run concurrently in various cases would be to sit on appeal.



Disposition

1. The Applicant, Julie Wangeci Githua shall have through DR MHC the Trial Court file 658 of 2012 availed to confirm the period of presentence stay in custody as required by Section 333(2) in line with judgment of Hon .G.V.Odunga J of 30/9/2020 and included in computation of sentence.
2. The Applicant Julie Wangeci Githua shall also confirm remission under Section 46 *Prisons Act* with regard to Criminal Case 658 of 2012 through Officer in Charge Langata Women Prison; since the sentence was commuted from death penalty to 10 years imprisonment.
3. The Applicant Julie Wangeci Githua may pursue her request /application before the Court of Appeal on sentences meted out in separate different cases to be considered for consolidation and/or sentences to run concurrently.

RULING DELIVERED SIGNED & DATED IN OPEN COURT ON 9/12/2024 IN MACHAKOS HIGH COURT (VIRTUAL/PHYSICAL CONFERENCE)

M.W.MUIGAI

JUDGE

IN THE PRESENCE OF:

No appearance for the parties

Geoffrey – Court Assistant

