Wanjala v Republic (Criminal Revision E040 of 2025)
[2025] KEHC 13438 (KLR) (29 September 2025) (Ruling)

Neutral citation: [2025] KEHC 13438 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E040 OF 2025

RN NYAKUNDI, J

SEPTEMBER 29, 2025

BETWEEN

DONISIO ODONGO WANJALA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Accused person was charged with stealing motor vehicle contrary to Section 278A of the Penal Code. The brief facts of the offence are that on the 23rd day of November 2018 at Eldoret Police lines in Soy Sub-County within Uasin Gishu County jointly with others not before Court stole a motor vehicle make Mitsubishi Lorry Registration N. KBC XXXG valued at Ksh 3,200,000 the property of Sammy Kiptum Birgen.

2. Alternative charge: Handling stolen property contrary to Section 322(1) as read with Section 322(2) of the Penal Code. The particulars are that on the 26th day of November 2018 at Kapkeben village in Soy Sub-County, within Uasin Gishu County jointly with others not before Court otherwise than in course of stealing dishonestly retained knock down motor vehicle parts of motor vehicle registration Number KBC XXXG make Mitsubishi lorry knowing to be stolen.

3. Count 2: Personating as a Public Officer contrary to Section 105(b) of the Penal Code. The particulars are that on the 23rd November 2018 at Cheptiret Trading Centre in Eldoret South Sub-county within Uasin Gishu County falsely presented himself to be a Police Officer to one Dennis Kipkoech Bett a member of Public which you knew to be false.

4. Count 3- Malicious damage to property contrary to Section 339(1) of the Penal Code. The particulars are that on diverse dates between 23rd and 26th November 2018 at Kapkeben village in Soy Sub-County within Uasin Gishu willfully and unlawfully damaged motor vehicle Registration No. KBC XXXG valued at 3,200,000 the property of Sammy Kiptum Birgen.

5. It is from these offences the Applicant was tried, found guilty, convicted and sentenced as follows:

   i. Count I - to serve five (5) years imprisonment.

   ii. Count II - to serve two (2) years imprisonment.

   iii. Count III - to serve two (2) years imprisonment. The sentence to run consecutively.

6. The Applicant vide application dated 26th March 2025 is seeking the following orders:

   a. That the application be certified as urgent and service thereof be dispensed with it be heard in the first instance.

   b. That the Applicant is seeking review of the sentence to run concurrently under Section 14(3) of the CPC.

   c. That the Applicant prays for time spent in remand under Section 33(2).

   d. That this honourable court has the power bestowed by the *Constitution* and the law under Article 165(3) to entertain application of this nature and award a redress.

   e. That the Applicant begs to be present during the hearing and final determination of this application.

7. Which application is grounded upon the annexed supporting affidavit sworn by Donisio Odongo Wanjala who deponed as follows:

   a. That he was charged with 3 counts, tried, convicted and sentenced to serve 9 years imprisonment. Count 1 to serve 5 years for the stealing motor vehicle contrary to Section 278(A) of the Penal Code and imprisonment for impersonating a Public Officer contrary to Section 105(B), 14(3) of the Penal Code. Count 2 to serve 2 years imprisonment for malicious damage contrary to Section 339(1) of the Penal Code by Hon. Areri on 11 Marth 2025.

   b. That he is seeking sentence review in accordance to Section 14(3) of the CPC for sentence to run concurrently.

   c. That he prays for time spent in remand custody to be factored in his sentence.

Decision

7. The Applicant seeks review of sentence but for this Court to review sentence invoking Section 362 and 364 of the Criminal Procedure Code there must be evidence on an error apparent on the face of the record on matters of facts and law, or on the other hand the application can be construed within the principles in the Benard Kimani Gacheru vs. Republic [2002] eKLR; thus:

> " 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."

8. In addition, the case of R vs. Scott (2005) NSWCCA 152 Howie, Grove and Barr JJ stated:

> " There is a fundamental and immutable principle of sentencing that this sentence imposed must ultimately reflect the objective seriousness of the offence committed and there must be a reasonable proportionality between the sentence passed in the circumstances of the crime committed .... One of the purposes of punishment is to ensure that an offender is adequately punished ... a further purpose of punishment is to denounce the conduct of the offender."

9. The crucial issue is regarding the factors that can be considered by the Judges and Magistrates while imposing the sentence. This is what the Court in Santa Singh vs State of Punjab (1976) 4 SCC190 observed:

> " A proper sentence is the amalgam of many factors such as the nature of the offence, the circumstances extenuating or aggravation of the offence, the prior criminal record if any, of the offender, the age of the offender, the record of the offender as to employment, the background of the offender with reference to education, home life, society and social adjustment, the emotional and mental condition of the offender, the prospects for the rehabilitation of the offender, the possibility of return of the offender to a normal life in the community. The possibility of treatment of training of the offender, the possibility that the sentence may serve as a deterrent to crime by the offender or by other and the current community need, if any, for even a deterrent in respect to a particular type of office."

10. The discretion to award a lesser sentence by an Appeals Court must be guided by the above principles. The test involves a number of factors weighed one after another or the way from the aggravating factors, mitigation, the seriousness of the offence, the personal circumstances of the offender, the victim impact and harm done by the offender during the commission of the offence and the community or public interest. These are the interplay between the offence and the punishment. The inability of Courts to speak firmly through their judgments in sentencing offenders particularly those who commit serious offences undermines the criminal justice system and people tend to start losing faith in the very organs they created to sustain the rule of law. In the case at bar, there are no sufficient grounds or compelling and substantial circumstances to review the sentence imposed by the trial Court. The only remedy available is that of six months pretrial credit period which should be discounted by the Prisons out of the total quantum period to be served in consonant with Section 333(2) of the Criminal Procedure Code.

11. The other grievance raised by the Applicant is on the application of concepts of concurrent and consecutive order made by the trial Court subsequent to imposing the sentence. The law is as set out in the Criminal Procedure Code herein as stated:

> 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 therefor 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.(3)Except in cases to which Section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—(a) of imprisonment which amount in the aggregate to more than

fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or (b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.(4)For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.[Act No. 17 of 1967, s. 46, Act No. 25 of 1971, s. 4, Act No. 4 of 1974, Sch.]

12. The following key principles remain to be part of the measure applicable in demonstrating to the Courts in the decision-making process of ordering sentences to run consecutively or concurrently:Judicial discretion: Judges have significant discretion in deciding whether to impose consecutive or concurrent sentences, a decision influenced by the specifics of the case such as the severity of the crimes and the defendant's criminal history.Totality principle: When a person receives sentences for multiple offenses, the court should apply the totality principle. This principle requires the total sentence to be a global reflection of the overall offending behavior rather than a simple sum of individual sentences.Case-specific analysis: The court of Appeal will not intervene in sentencing decisions merely because it would have imposed a different sentence; it will intervene if there is a clear misdirection or if the sentence is demonstrably wrong in principle.

13. It is settled law that a trial Magistrate is empowered to impose consecutive sentences in a case where there is material evidence to support such a sentence so long as it does not exceed the maximum statutory punishment for the offences. The Court in R v Jameson and Jameson [2009] 2 CAR (S) 26 it was stated that:

> "... A sentencing Judge should pass a total sentence which properly reflects the overall criminality of the Applicant and the course and nature of the criminal conduct disclosed by the offences for which he stands to be sentenced, while always having regard to the principle of totality. However, the imposition of concurrent sentences for like offences may not be appropriate where, as here, the statutory maximum sentence for an offence prevents the proper reflection of these matters."

14. The Court is therefore concerned with what can be considered the first limb of the test for the application of consecutive sentences, that is, whether the offences were "like" offences which did not constitute a single incident. The court accepted that "where offences are indeed distinct or separate events, the court is entitled to order consecutive sentences to reflect the Applicant's criminality.

15. Generally speaking, a Magistrate has the power to impose consecutive sentences. In this case, however, having regard to the circumstances, it was a mistake for the Magistrate to order the five-year sentences to run consecutively. Barring special circumstances, where a person is convicted of multiple offences which arise out of the same set of facts or the same incident, it will be appropriate to impose concurrent, and not consecutive, sentences.

16. On the other hand, consecutive sentences may be given where the offences arise out of unrelated facts or incidents. The Court in the case of Linton Pompey v The Director of Public Prosecutions [2020] CCJ 7 the Court acknowledged the application of the principle of proportionality in sentencing by remarking as follows:

> "...The sentence imposed upon a convicted person should ultimately be neither too harsh nor too lenient. It must be proportionate. The totality principle requires that when a Judge sentences an offender for more than a single offence, the Judge must give a sentence that reflects all the offending behavior that is before the court. But this is subject to the notion that, ultimately, the total or overall sentence must be just and proportionate. This

remains the case whether the individual sentences are structured to be served concurrently or consecutively."

17. From the facts of this case, the only question that does merit review in favour of the Applicant is for the sentences to run concurrently and not consecutively as ordered by the learned trial Magistrate. However, the judgment of the trial Court is affirmed on the rest of the orders.

DATED, SIGNED AND DELIVERED VIA EMAIL AND CTS AT ELDORET THIS 29TH SEPTEMBER 2025

.....

R. NYAKUNDI

JUDGE