

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
CRIMINAL APPLICATIONS DIVISION
MISC. APP. NO. E020 OF 2025

BETWEEN

**MICHAEL
MULWA.....APPLICANT**

NDUNDA

AND

**REPUBLIC.....RESPOND
ENT**

RULING

1. The applicant has filed his Chamber Summons dated 10th March 2025 seeking the following reliefs:

- 1. THAT this Hon. Court be pleased to issue orders for the concurrent of the sentences imposed in respect of the 2 sentences as prayed herein;***
- 2. THAT this Hon. Court be pleased to review the fine and awards the applicant with an affordable one.***

2. The application is supported by the grounds stated on its face and the applicant's supporting affidavit dated 10th March 2025. According to the applicant, he was charged in Kangundo Chief Magistrate's Court ***Criminal Case No. E957 of 2023*** with two offences of malicious damage contrary to section 339 (1) of the Penal Code and stealing

contrary to section 275 of the Penal Code. After a full trial, the appellant was convicted and sentenced to a term of 4 years for the offence of malicious damage and 3 years with the option of a fine of Kshs.200,000.00 for the offence of stealing. The applicant now seeks that the two sentences run concurrently. In support of his application, he cited the cases of **John Njogu Macharia vs. Republic** [2015] eKLR and **Tuck and Sons vs. Priester** (1887) 19 QBD 629

3. During the hearing of the application the respondent opposed the application. Through its counsel, the respondent submitted that the applicant failed to disclose that he had previously filed an appeal before this court in Machakos ***HCCRA No. E064 of 2023***. That appeal which challenged both conviction and sentence was dismissed on 15th October 2024. The respondent argued that the issues raised in the present application had been raised and addressed in the appeal and were therefore *res judicata*. It was further submitted that if the applicant was dissatisfied with the High Court decision, his recourse lay with the Court of Appeal.
4. In urging this court to allow his application, the applicant submitted that he has spent a considerable amount of time in custody since he was arraigned in court and prayed for a reduction of sentence.
5. I have considered the application, the submissions by both parties and analyzed the applicable law. The applicant seeks orders for his sentences to run concurrently rather than consecutively. It is also important to note that the applicant

previously appealed to this court in ***Mulwa vs. Republic*** [2024] KEHC 12527 (KLR) where the appeal on sentence was dismissed. In that decision the court held:

“26. As to sentence, although the Accused person upon conviction gave his mitigation, the Trial Court and the Prosecution took into account the extent of damage to the Complainant’s house, the resulting damage incurred as was assessed by the Quantity Surveyor who presented a Report.

27. These facts illicit circumstances which depict the Applicant/Appellant as a danger to the Complainant and rest of his family. I concur with sentiments of the Trial Court he was not eligible for non-custodial sentence.

28. To the issue of sentences running concurrent or consecutive there is no hard and fast Rule it is the Trial Court’s discretion that should be exercised judiciously and in this case it was.

29. This is clearly a family feud, the Accused person took the law in his hands and destroyed his sister’s home rendering her homeless.”

6. From the above holding, it is evident that this court has already addressed the issues now raised by the applicant. It is well established that a court of concurrent jurisdiction cannot review or overturn the decision of another court of concurrent jurisdiction. The applicant is effectively inviting this court to sit on an appeal over a decision already rendered by a court of concurrent jurisdiction which is procedurally and legally impermissible. This is not the proper forum for such a challenge.

7. Accordingly, I find that this court is *functus officio*. The present application thus lacks merit and is dismissed in its entirety.

8. It is so ordered.

Dated, signed and delivered at Machakos this 16th day of October, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant