



**Maende v Republic (Criminal Miscellaneous Application
12 of 2020) [2025] KEHC 14504 (KLR) (13 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14504 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION 12 OF 2020**

S MBUNGI, J

OCTOBER 13, 2025

BETWEEN

LABAN MKAISI MAENDE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an appeal arising from the decision of Hon T.A Odera (S.P.M) in
Mumias, Criminal Case No 1302 of 2016 delivered on 10TH July 2019))*

RULING

Background

1. The Applicant, currently serving a twenty-five (25) year imprisonment term following his conviction in the Criminal Case No. 1301 of 2016, and a five year (5) year imprisonment term after conviction in the Criminal Case No. 1302 of 2016, moved this Court by way of a Notice of Motion dated 12th February 2020.
2. He seeks that the sentences imposed in his subsequent conviction in Mumias Criminal Case No. 1302 of 2016, where he was sentenced to five (5) years imprisonment on each of two counts of being in possession of a firearm contrary to section 89 (1) and ammunition contrary to Section 89(1) of the Penal Code, be ordered to run concurrently with the earlier 25-year sentence.
3. The trial court in Criminal Case No. 1302 of 2016 had already directed that the two counts within that case run concurrently, meaning the applicant would serve 5 years for that case. The applicant now prays that this 5-year term should also run concurrently with the earlier 25-year sentence that was affirmed after an appeal in the High Court of Kakamega (Criminal Appeal No 155 of 2018), thereby effectively reducing his total imprisonment period to 25 years.



Applicant's Grounds

4. The applicant's main contention is that, as a matter of law, all sentences begin to run from the date they are pronounced, and therefore the five-year sentence should not have been deferred to commence after the 25-year term. He also invokes considerations of fairness and justice, arguing that he suffers irreversible prejudice by serving sentences consecutively.

Issue for Determination

5. The issue for this Court's determination is whether the sentences in Mumias Criminal Case No. 1301 of 2016 and Mumias Criminal Case No. 1302 of 2016 ought to run concurrently or consecutively.

Analysis

6. Section 14 of the Criminal Procedure Code (Cap 75 Laws of Kenya) provides that:

“

“(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 therefor which the court is competent to impose; such punishments, when consisting of imprisonment, shall commence one after the expiration of another in such order as the court may direct, unless the court directs that the punishments shall run concurrently.”

This means that concurrent sentences are the exception, and consecutive sentences are the general rule, particularly where offences are distinct and unrelated.

7. The guiding principle is that sentences run concurrently only where the offences arise from the same transaction or are part of a continuous series of acts forming one offence.
8. In *Nganga v Republic* [1981] KLR 530, the Court of Appeal held that: “Concurrent sentences are usually meted out where the offences are committed in one transaction, but where there are different criminal acts, even though of a similar nature, consecutive sentences are appropriate.”
9. Similarly, in *Peter Mbugua Kabui v Republic* [2016] eKLR, the Court stated that “It is settled law that concurrent sentences are appropriate where the offences arise from the same transaction. Where they are distinct and committed on different occasions, consecutive sentences are justified.”
10. The first criminal conviction for the Criminal Case No 1301 of 2016 was for two counts of robbery with violence, handling of stolen goods and gang rape that occurred on the dates of 1ST December 2016 and 2ND December 2016,
11. while this present case, for the Criminal Case No 1302 was for possession of a firearm and ammunition which was recovered at about 5:40 PM on 2ND December 2016, thereafter, the accused was arrested and taken to Mumias Police Station for further interrogation. The two cases (Criminal Case No 1301 of 2016 and Criminal Case No 1302 of 2016) involve different criminal transactions, were tried separately, and resulted in separate judgments.
12. The trial magistrate in the second case exercised discretion to order that the two counts within that case run concurrently. That decision already benefited the applicant by avoiding a cumulative ten-year term, limiting it instead to five years.



13. To now ask that the entire second case run concurrently with the 25-year sentence would be contrary to both the letter and spirit of Section 14 Criminal Procedure Code, since the two offences are separate in nature and time, and no miscarriage of justice has been shown.
14. The Court of Appeal in *Abdi Ali Bare v Republic* [2015] eKLR emphasized that: “Where an accused person is convicted in different trials for distinct offences, the sentences must run consecutively unless the court specifically orders otherwise.”
15. Therefore, the applicant’s assertion that all sentences must begin to run from their date of pronouncement is misplaced, as that principle applies within the same trial unless a contrary order is given. Where convictions arise from different trials, each sentence takes effect independently, and it is lawful and morally right that such sentences be served consecutively.

Disposition

16. In view of the foregoing analysis, this Court finds that:

The applicant was lawfully sentenced to a 25-year imprisonment in Criminal Appeal Case No. 155 of 2018 that was previously convicted and sentenced in the Senior Principal Magistrate’s Court at Mumias as CRC No 1301 of 2016.

In Criminal Case No. 1302 of 2016, the trial court properly exercised discretion in ordering the two counts to run concurrently, resulting in a five-year term.

The two cases being distinct, arising from different transactions, tried and convicted separately indicates that it is both lawful and just that the sentences run consecutively, amounting to a total of thirty (30) years imprisonment.

17. The applicant has not demonstrated any error, illegality, or impropriety on the part of the trial court to warrant interference under Section 362 and Section 364 of the Criminal Procedure Code.
18. Consequently, the application is without merit and is hereby dismissed in its entirety.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 13th DAY OF OCTOBER, 2025.

S. MBUNGI

JUDGE

In the Presence of:-

CA: Angong’a

Ms Osoro for the DPP present online.

Appellant absent.

COURT: Ruling read, Court Assistant to publish it on the CTS forthwith.

