

**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
ANTI-CORRUPTION AND ECONOMIC CRIMES DIVISION
CRIMINAL REVISION NO. E003 OF 2025**

ZINJE JUMAA MWADAMA.....APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENTS

RULING

- 1.** The applicant herein has moved this court by way of the Notice of Motion dated the 3rd day of March, 2025, under Section 364 of the Criminal Procedure Code seeking the following Orders;

“seeking concurrent sentences and to be placed on probation.”
- 2.** The application is supported by the annexed affidavit sworn by the applicant, on even date.
- 3.** The applicant states that he was arrested, charged, tried and convicted of Fraudulent Acquisition of Public property contrary to **Section 46(1) (a)** of the **ACECA**, providing false information to a public entity contrary to **Section 46(2)** of the **Leadership and Integrity Act 2012**, and providing false

information to a public entity contrary to **Section 46(1) (d) 3(1) of the Leadership and Integrity Act, 2012.**

- 4.** That the applicant pleaded not guilty and upon conclusion of the case, he was found guilty and sentenced to an imprisonment for diverse terms of 12 months, 5 years, 2 months and another 12 months for counts 1, 2, 3 and 4, respectively, to be served consecutively, and the court ordered that the sentence should start running from the date of the sentence.
- 5.** The applicant avers that under **Section 333(2)** of the **Criminal Procedure Code**, the period of time that he had spent in custody during trial ought to have been factored in, in the sentence. He has prayed that the sentence term be computed from the date of arrest pursuant to the aforesaid provision.
- 6.** It is also his case that, according to the law, where multiple counts are proved in a charge against a convicted person, and the offences were committed in the same transaction, the sentences should run concurrently. That the trial court

disclosed no aggravating factors as the basis for the decision to order the sentences to run concurrently.

7. The applicant states that the sentences in counts one, two and three should have been ordered to run concurrently particularly the offences having been committed in one transaction, and the matter tried in one charge sheet. He has also pleaded with the court to suspend the remaining period of his sentence, to be served on probation.

8. The application is opposed on the following grounds;

1) Under Section 364(1) of the criminal procedure Code, the High court is vested with the following powers

a) In the case of a conviction exercise any of the powers conferred on it as a court of Appeal by Sections 354, 357, and 358 and may enhance the sentence

b) In the case of any other Order other than Order of acquittal, alter or reverse the order

2) Clause 7.13 of Kenya Judiciary Sentencing Policy Guidelines is to the effect that in determining the period of imprisonment that should be served by the offender, the court must take into account the period in which the offender was held in custody during trial.

9. In order for the applicant to succeed in an application for review of the sentence in the manner proposed, he must

demonstrate and show that the sentence passed against him was erroneous, and not one provided under the law.

- 10.** For the court to exercise its revisionary power relating to the review of the sentence with specific reference to this application, the applicant must demonstrate to the court, the time, if any, spent in custody was not considered by the trial court.
- 11.** For purposes of determining whether sentence passed against the applicant ought to run concurrently as advocated by the applicant, he must demonstrate to the court that the offence he was charged with emanated from a single transaction. In view of the sentencing policy guidelines, Clause 7.13 categorically, and in contradictory manner provides that where the offences are caused or committed in the course of multiple transactions and where there are multiple victims, the sentence should run concurrently.
- 12.** Overallly speaking, it is emphasized and held that sentencing is a matter of discretion of the trial court unless it is shown and demonstrated by the applicant that the trial court was plainly wrong in its manner of exercise of the same. Unless

the contrary is proven, the applicant's application is bound to fail.

13. The application was canvassed by way of written submissions.

Applicant's Submissions

14. The applicant submitted that, the offences having been committed in a single transaction, the sentences ought to run concurrently pursuant to Clause 7.13 of the Kenyan Judiciary Sentencing Policy Guidelines.

15. The applicant also relied on Clause 7.10 of the Kenyan Judiciary sentencing policy Guidelines which provides that **Section 333(2)** of the **Criminal Procedure Code** obligates the court to take into account the time served in custody if the convicted person had been in custody during the trial. He also relied on Clause 7.11 of the same guidelines which also obligates the court to take into account time spent in custody during trial.

Respondent's Submissions

16. The respondent submitted that the applicant was charged with the offence of fraudulent acquisition of property contrary

to **Section 46(1) (a)** of the **Anti- Corruption and Economic Crimes Act of 2003** vide criminal case No. E003 of 2023 and upon the conclusion of the case, he was found guilty and convicted. That he was charged with four counts and found guilty in all of them. The sentences were ordered to run consecutively.

17. The respondent identified the following issues for determination;

- a) Whether the offences subject matter of the review application herein emanated from a single transaction to justify the respective sentences to run concurrently.*
- b) Whether the offences thereof were caused or committed in the course of multiple transactions to justify consecutive running of the sentences.*
- c) Whether there were multiple victims to justify the sentences to run concurrently.*
- d) Whether pre-trial period spent in custody, if any, by the applicant was duly considered by the trial court during sentencing.*

18. On concurrent sentence, the respondent referred to Clause 7.13 of the Kenyan Judiciary sentencing policy guidelines. It relied on the case of Court of Appeal for Eastern Africa vs Sawed Mukasa s/o Abudalla Aligwaisa, Criminal Appeal No.

182 of 1945 (Appeal from Decision of H.M High court of Zanzibar, in which the court held that the practice where a person commits more than one offence at the same time and in the same transaction is, save in very exceptional circumstances to impose concurrent sentences.

- 19.** The respondent also relied on the case of **GBM vs Republic (Court of Appeal at Nairobi, Criminal Appeal No. 48 of 2017)** in which the court reiterated that an appellate court should interfere with sentences only when it is shown that the sentencing court acted on wrong principles; overlooked material factors or the sentence itself is so manifestly excessive as to amount to an error of principle calling for interference. That regarding consecutive jail sentences, they reiterated that the same court had spoken quite clearly and consistently on what a court should consider before imposing consecutive or concurrent jail terms.
- 20.** Reliance was also placed on the case of **Rex vs Saiid Nsubaga c/o Juma & another (1941) 9 EACA 81** and quoted in the case of **Nathan Vs Republic (1965) EA 777**

where the court stated as follows on what the phrase “same transaction” means;

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

21. In sum, it was the respondent’s submission that being guided by the case of Nathan (supra) and considering that the appellant committed a series of offences at the same time in a single act of transaction, a concurrent sentence was desirable. The respondent also urged the court to take into account the period, if any, spent by the appellant in custody during the trial period for the purpose of prescription of an appropriate sentence.

Analysis and determination

22. The court has considered the application and the supporting affidavit, the Grounds of opposition and the Submissions filed by the parties herein. In my considered view, there are only two issues for determination;

- a) ***Whether the sentences that were imposed by the trial court should run concurrently or consecutively***
- b) ***Whether the time that the applicant spent in custody during trial was taken into account by the trial court during the sentencing.***

23. On the first issue, the applicant was charged with twelve (12) counts. At the end of the trial, he was acquitted on counts 111, 1X, X, X1 and X11 under **Section 215** of the **C.P.C** but was convicted in counts 1,11, and 111 as follows; Count 1 a fine of Ksh 100,000 in default, shall serve 12 months imprisonment and in addition, to a mandatory fine of Ksh 4, 746, 834.38 equivalent to the salary earned from KEPHIS and in default, Five (5) years imprisonment; Count 11, a fine of Ksh 100,000 and in default to serve 12 months imprisonment and in Count 111, a fine of Ksh. 100,000 and in default to serve 12 months imprisonment. For context the court will set out the three counts in which he was convicted hereinbelow;

Count I: *fraudulent acquisition of public property contrary to Section 45(1) (a) as read with Section 48 of the Anti-Corruption & Economic Crimes Act, 2003 (ACECA)*

Count II: *providing false information to a public entity contrary to Section 46(1)(d) as read with Section 46*

(2) of the Leadership and Integrity Act, 2012 Laws of Kenya.

Count III: providing false information to a public entity contrary to section 46(1)(d) as read with Section 46(2) of Leadership and Integrity Act, 2012 Laws of Kenya.

24. Looking at the three counts, the offences in Counts 2 and 3 were committed on 8th of February, 2013 at the Kenya Plant Health Inspectorate Services within Nairobi County when the applicant provided false information in the KEPHIS Employment Application form KEPHIS/EAI/1, by giving false information about his qualifications which information he knew or believed to be false thereby securing employment at the Kenya Plant Health Inspectorate Services.

25. Section 14 of the **Criminal Procedure Code** provides; Sentences in cases of conviction of several offences at one trial:-

(1) Subject to subsection (3), when a person is convicted at one trial of two or more distinct offences, the court may sentence him, to the several punishments 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.

- 26.** Upon his conviction in counts 1, 2, and 3, the trial Magistrate ordered that the sentences shall run consecutively from the date of the Judgement i.e 30th July 2024.
- 27.** The applicant herein was convicted of three counts and the information purportedly given to the Kenya Plant and Health Inspectorate by the applicant, was for purpose and common intent of securing employment with the same, which objective the applicant managed to achieve albeit in an illegal manner. The evidence on record shows that the applicant committed a series of offences at the same time in a single transaction, in which event, a concurrent sentence would be more desirable as opposed to a consecutive sentence.
- 28.** Further, the series of acts by the appellant were so connected together by proximity of time, criminality or criminal intent , continuity of action and purpose or by relation of cause and effort as to constitute one transaction, namely to secure employment in the said organization through unlawful means.

The offences constituted by those series of acts were committed in the course of the same transaction.

29. The applicant has also taken issue with the trial court for its failure to take into account the period he was in custody during the trial. **Section 333 (2)** of the **Criminal Procedure Code** 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, 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.

30. The court has perused the judgement of the trial court and has noted that in passing the sentence, there is no indication that the time that the applicant spent in custody was taken into account, which was an omission on the part of the learned trial Magistrate.

31. This court has taken the liberty to peruse through the record and it shows that the applicant was arrested on the 24th May,

2023 and he was admitted to bail on the 25th May, 2023 but only managed to pay the cash bail on 6th June, 2023, meaning, he was in custody for 14 days during the trial and the period of the 14 days ought to have been taken into account by the Trial court.

32. Considering the foregoing and what the court has stated hereinabove, I find that the application has merits and I do hereby make the following Orders;

- a) The sentences that were imposed by the trial court in Counts 1, 2, and 3 are hereby Ordered to run concurrently as opposed to consecutively as ordered by the trial court.***
- b) The period of 14 days that the applicant spent in custody between 24th May, 2023 to 6th June, 2023 to be deducted from the remainder of his jail term.***

33. It is so Ordered.

Signed, dated and delivered virtually on this 8th day of October 2025

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**L.M. NJUGUNA
JUDGE**

In the presence of:-

Mr. Mong'are for the Respondent
The Applicant in person (virtually)
Court assistant - Adan

ORIGINAL