



**Nyabarura v DPP (Criminal Miscellaneous Application  
E166 of 2024) [2025] KEHC 13801 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13801 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL MISCELLANEOUS APPLICATION E166 OF 2024**

**JM NANG'EA, J  
OCTOBER 2, 2025**

**BETWEEN**

**JOSEPH MWERESA NYABARURA ..... APPLICANT**

**AND**

**DPP ..... RESPONDENT**

**RULING**

1. By an undated Notice of Motion application, the Applicant prays that sentences meted out against him in Nakuru Chief Magistrate's Criminal Case No. E615 of 2023 be directed to run concurrently. He places reliance on 165 (3) (9) of the *Constitution* of Kenya 2010.
2. The Prosecution Counsel opposes the application by written submission filed on 31/7/2025 citing various legal authorities including Case Law in *Peter Mbugua Kabui* (2016) eKLR and *Sawech Mukaka S/o Abdulla Aligwaisa* (1946) 13 EACA 97. The law as elucidated in these decisions is that where a person commits more than one offence at the same time and in the same transaction, concurrent sentences may be imposed generally. However, if the offences are separate and distinct and are committed in different transactions although they are in one charge sheet, it is not illegal to mete out consecutive sentences.
3. The lower court's record indicates that the Applicant was convicted and sentenced in respect of two counts of causing Greivous Harm Contrary to Section 234 of the *Penal Code* and one count of Assault Contrary to Section 251 of the *Penal Code*. The complainants are different persons in each of the counts. The Applicant was fined Kshs. 500,000/= or serve 5 years imprisonment on each of the two counts of causing Greivous Harm Contrary to Section 234 of the *Penal Code*. Regarding the charge Assault Contrary to Section 251 of the *Penal code* was fined Kshs. 5,000/= in default of payment of which he was sentenced to two (2) months imprisonment. The sentences were ordered to run consecutively.



4. Section 362 of the *Criminal Procedure Code* empowers this court to call for records of a Subordinate Court;

“for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

5. Having perused the lower court’s record and particularly as regard its directions in sentencing the Applicant, I find no error warranting revision by this court. Although the offences were committed on the same date, the victims are different. Moreover, where as in this case an offender is given an option of a fine or in default a custodial sentence, it is proper to direct that the custodial sentences be served consecutively if the fine is not paid. The lower court therefore lawfully directed the custodial sentences imposed against the Applicant to be served out consecutively.

6. The Application is accordingly dismissed.

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**J. M. NANG’EA**

**JUDGE.**

**RULING DELIVERED VIRTUALLY THIS 2<sup>ND</sup> DAY OF OCTOBER, 2025 IN THE PRESENCE OF:**

Mr. Wakasyaka for the DPP

Applicant, Present

Court Assistant (Ng’eno)

**J.M. NANG’EA**

**JUDGE.**

