



REPUBLIC OF KENYA



**KENYA LAW**  
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**Miriu v Republic (Criminal Revision 171 of 2023)  
[2025] KEHC 15590 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15590 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KERUGOYA  
CRIMINAL REVISION 171 OF 2023  
EM MURIITHI, J  
OCTOBER 30, 2025**

**BETWEEN**

**ROSE WANGECI MIRIU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with others for two counts of obtaining money by false pretences and conspiracy contrary to sections 313 and 317 of the Penal Code, respectively, as follows:

Count 1

Obtaining money by false pretense contrary to section 313 of the Penal Code.

1.Caroline Wanjiku Murage, 2. Rose Wangeci Muriu and 3. Nahashon Murage Muriithi on 22<sup>nd</sup> June, 2018 in Kerugoya town within Kirinyaga County jointly with intent to defraud obtained KShs.1,800,000 from Fridah Wambui Kiura and Deany Wanjiku Kinyua by falsely pretending that you were in a position to sell to them 5 acres from a parcel of land No. Mwea/MIUU/LR. 13963/4511 a fact you knew to be false.

Count 2

Conspiracy to defraud contrary to Section 317 of the Penal Code.

1.CAROLINE WANJIKU MURAGE ALIAS CAROLINE WANJIKU GITARI 2.ROSE WANGECI MURIU ALIAS GRACE WAMARWA 3.NAHASHON MURAGE MURIITHI: On unknown dates in the month of June 2018 within the Republic of Kenya, jointly with others not before court with intent to defraud, you conspired and defrauded FRIDAH WAMBUI KIURA and DEANY WANJIKU KINYUA Ksh.1, 800,000/= (One million eight hundred thousand shilling only)



by falsely pretending that you were in a position to sell to them 5 acres from parcel of land NO.MWEA/MIUU/L.R.13963/4511 a fact you knew to be false.

2. The trial court found the applicant guilty as charged on the two offences, convicted and sentenced her to imprisonment for two years on each count making a total sentence of four years' imprisonment, the two running consecutively.
3. The applicant moves the court seeking sentence review that both counts run concurrently having been convicted on 30<sup>th</sup> March, 2023.

### **Applicant's submissions**

4. The applicant seeks for her sentence to run concurrently as the two offences were committed in the same transaction. She further seeks for the time spent in custody to be considered as stated in section 333 (2) of the Criminal Procedure Code. She was arrested on 14/3/2019 and released on bail on 18/4/2019. She is remorseful for the offence, has reformed and acquired skills while in prison. The Prison reports dated 19<sup>th</sup> June, 2024 and 13<sup>th</sup> June 2025 report that the applicant for her positive attitude and good character in Prison and recommend that she could be given 'another chance at freedom.'

### **Respondent's submissions**

5. In implicit concession of the application, the DPP submits that the Judiciary Sentencing Policy Guideline at paragraph 7 stipulates that if an accused person commits a series of offences at the same time in a single act/transaction, concurrent sentence should ensue.

### **Issue**

#### **Whether the sentences should be reviewed to run concurrently for the 2 counts.**

### **Analysis**

6. The record shows that both offences were committed on the same date, involved the same complainants, and were part of a single fraudulent transaction relating to the sale of land parcel Mwea/Miuu/LR.13963/4511. Section 14(1) of the Criminal Procedure Code provides that:

“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 therefore which such punishments, when consisting of imprisonment, shall commence one after the expiration of the other in such order as the court may direct, unless the court directs that the punishments shall run concurrently.”

8. Further, the Judiciary Sentencing Policy Guidelines (2016) at paragraph 7.13 cited by the DPP states that:

“Where the offences arise from a single transaction, the sentences should run concurrently. However, where the offences are distinct and unrelated, the sentences should run consecutively.”



The statement of law is elaborated in the 2023 version of the Sentencing Guidelines at paragraph 2.3.21-30 as follows:

“The principle of totality and concurrent and consecutive sentences

- 2.3.21 Notwithstanding the provisions under the Criminal Procedure Code and the Penal Code summarised in paragraph 2.3.4 above, the discretion to impose concurrent or consecutive sentences lies with the court. There are two elements to the concept of totality, and these apply as much to terms of imprisonment as they do to community service and fines.
- 2.3.22 Firstly, all courts when sentencing for more than one offence should pass a total sentence which reflects all the offending behaviour in a way that is just and proportionate. This is whether the sentences are consecutive or concurrent and will usually mean that concurrent sentences will result in a longer sentence overall than a single sentence for one offence. However, the court must avoid ‘double counting’ where the additional offences are ancillary to the main offence e.g., robbery with a weapon – the presence of a weapon – an intrinsic part of the main offence of robbery - will likely aggravate the sentence on robbery and so the weapon offence should run concurrently and will not necessarily exceed the sentence for the robbery itself.
- 2.3.23 Secondly, it is rarely possible to arrive at a just and proportionate sentence by simply adding together single sentences for each offence. The court must address the offending behaviour as a whole together with the personal circumstances of the offender. Accordingly, the court must bear in mind the purposes of sentencing set out in paragraph 1.3.14
- 2.3.24 A concurrent sentence will normally be appropriate where the offences arise out of the same incident or facts. E.g., poaching of several animals that vary in the degree of protection they are afforded under the law; a burglary ‘spree’ of several properties committed in one night; fraud and associated forgeries, or a dangerous driving incident where multiple victims are injured as a result of one offence of dangerous driving e.g., driving into a bus stop.
- 2.3.25 A consecutive sentence will normally be appropriate where the offences arise out of unrelated facts or incidents e.g., attempting to obstruct the course of justice in relation to an unrelated offence; where the defendant is convicted of dealing in drugs and also possession of a firearm upon arrest – the firearm offence is not an intrinsic part of the drugs matter and requires separate recognition, or where the accused commits a theft on one occasion and an assault on a different victim on another occasion.
- 2.3.26 A consecutive sentence may also be appropriate where the offences are of the same or similar kind but where the court is of the view that a concurrent sentence will not sufficiently reflect the overall criminality e.g., assault of a police officer whilst trying to evade arrest for the original offence; assault of the same victim committed in the context of domestic violence or where there are sexual offences against the same victim.
- 2.3.27 Other considerations that apply include the following:



- i. Where an accused person commits an additional offence during the operational period of a suspended sentence, and the court decides to activate the suspended sentence, the additional sentence should normally be consecutive as it will have arisen out of separate facts.
- ii. Where consecutive sentences are to be passed, the court must add up the sentences together and then consider if the total is just and proportionate. A downward adjustment can then be made. See Part V and the GATS.
- iii. Where sentencing multiple offenders who each have differing levels of culpability based on their role in the offence, any downward adjustment must be applied by the same proportion for each accused person so that the lead offender can be clearly identified.
- iv. Where several offences are all imprisonable but none of the individual offences merit a custodial sentence, the custody threshold may be crossed by reason of multiple offending.
- v. Indeterminate sentences should generally be ordered to run concurrently. In the absence of parole or similar mechanisms, it is not practicable at this stage to advise on the application of either determinate or indeterminate sentences imposed after the passage of a previous indeterminate sentence. The general principles of proportionality should be applied.

2.3.28 In the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a previous sentence.<sup>51</sup>

2.3.29 A community service order imposed for multiple offences is a composite package rather than an accumulation of sentences for individual charges. Where the court believes it is necessary to impose more than one community order, it should order that they run concurrently and for ease of administration, each order should be identical and should not exceed the maximum period is three years in totality.

2.3.30 In relation to fines imposed for non-imprisonable offences, the court should start by determining the fine appropriate for each individual offence based on the seriousness of the offence and the financial circumstances of the offender insofar as they are known, or appear, to the court. The court should then add up the fines together and then consider if the total is just and proportionate.”

9. In *Peter Mbugua Kabui v Republic* [2016] eKLR, where the Court of Appeal held that:

“Where the offences emanate from the same transaction, it is proper that the sentences be ordered to run concurrently.”



10. The Court has confirmed that unlike the submissions by the DPP as to the sentences of three and one year respectively on the two counts, the record of the Court in its ruling on sentence indicates sentences of imprisonment for two (2) years on each count running consecutively as follows:

“COURT

- i. I have considered the circumstances of this case. The prevalence of the offence under consideration which is me bulk of the Court work. I have also considered the loss the companies underwent.
- ii. They are each sentenced to serve. an imprisonment term of 2 years each in each count. It will be served consecutively. Right of appeal 14 days.
- iii. Cash bail security deposited be returned to the depositor.

HON. C. KIPKORIR

PRINCIPAL MAGISTRATE

30/03/2023”

11. It is not clear form the record that the court did consider that the offences were committed in the same transaction. This is an appropriate case for interference with sentence under Section 364 of the Criminal Procedure Code. The offences of obtaining by false pretences and conspiracy were committed against the same complainants and the same property. It was a proper setting for an order for concurrent service of the sentences on the two counts.
12. The trial court should also have given effect to Section 333(2) of the Criminal Procedure Code by taking into account the period of pre-trial detention, the time spent in custody before release on bail.
13. However, considering the sentence review to run concurrently and the period served in prison for over two (2) years as reported in the two Prison reports the applicant has served the concurrent sentences of imprisonment for two (2) years in full.

### **Orders**

14. Accordingly, for the reasons set out above, the in exercise of its supervisory jurisdiction and revision powers directs that the sentence of imprisonment for two (2) years for the two counts in the Kerugoya Criminal Case No. 199 of 2019 shall be served concurrently and take into account the period of pre-trial detention in terms of section 333 (2) of the Criminal Procedure Code.
15. As the applicant has been in custody for over two years, she has served her concurrent sentences of imprisonment for two years in full, and there shall, therefore, be an order for the immediate release of the applicant from custody, unless she is otherwise lawfully held.

Orders accordingly.

**DATED AND DELIVERED THIS 30<sup>TH</sup> DAY OF OCTOBER 2025.**

**EDWARD M. MURIITHI**

**JUDGE**

**APPEARANCES:**

Mr. Mamba for the DPP.



Applicant in person.

