



REPUBLIC OF KENYA



KENYA LAW
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**Omollo v Republic (Criminal Revision E283 of 2024)
[2025] KEHC 14940 (KLR) (24 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E283 OF 2024**

A MABEYA, J

OCTOBER 24, 2025

BETWEEN

ERICK OCHIENG OMOLLO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Erick Ochieng Omollo was 28/8/2022 charged with multiple offences before the Magistrate’s Court at Maseno in Maseno Criminal Case No. E307 of 2022, all of which he pleaded guilty to.
2. He faced 2 Counts of threatening to kill contrary to section 223 of the *Penal Code* and was sentenced to serve imprisonment of 4 years in each of the 2 counts though the sentences were to run concurrently.
3. The petitioner further faced 4 Counts of malicious damage to property contrary to section 339 (1) of the *Penal Code* for which he was sentenced to serve 3 years’ imprisonment for each of the count with the sentences to run concurrently.
4. There was also a separate charge of willfully assaulting a police officer in due exercise of the police officer’s duties contrary to section 103 (a) of the *National Police Service Act* No. 11 (A) of 2011 for which he was sentenced to serve 3 years’ imprisonment.
5. Lastly, he was also charged with the offence of escape from lawful custody contrary to section 123 as read with section 36 of the Penal Code and was sentenced to serve 2 years’ imprisonment.
6. By Motion on Notice dated 11/10/2024, he moved the Court seeking review of his sentence. The application was brought under Sections 362 as read with 364 as well as Section 333 (2) of the *Criminal Procedure Code*.
7. He sought that he be resentenced on the basis of the mitigation that he presented before Court. He averred that he pleaded guilty and sought forgiveness from the victims of the offence; that he was a



- first offender; was remorseful and had learnt his lesson while in prison. That offences were committed while he was under the influence of alcohol and that he sought compensation under section 35 of the [Penal Code](#) to restore damage which he caused to his family properties.
8. The application was opposed by the respondent who contended that the applicant had 4 years since his sentencing to pursue mediation. That the trial court did not invoke section 35 (1) of the Penal Code and thus the application under this section is an abuse of the court process.
 9. That sections 12 and 14 of the [Criminal Procedure Code](#) were adhered to by the trial court which stated that the sentences were to run consecutively and that in the event that the trial court failed to consider section 333 (2) of the [Criminal Procedure Code](#) the same ought to be considered.
 10. In [Bernard Kimani Gacheru v Republic](#) [2002] eKLR, the Court of Appeal stated that: -

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”
 11. As to whether sentences should run concurrently or consecutively, section 14 of the [Criminal Procedure Code](#) (Cap 75) Laws of Kenya provides as follows: -

“(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 therefore 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.
 12. Further, in [Peter Mbugua Kabui v Republic](#) [2016] eKLR, the Court of Appeal stated that: -

“As a general principle, the practice is that if an accused person commits a series of offences at the same time in a single act/transaction a concurrent sentence should be given. However, if separate and distinct offences are committed in different criminal transactions, even though the counts may be in one charge sheet and one trial, it is not illegal to mete out a consecutive term of imprisonment.”
 13. Finally, on this issue, the [Sentencing Policy Guidelines](#) 2023 contain specific provisions on whether a court should impose consecutive or concurrent sentences. The Guidelines provide as follows: -

“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”.

14. Based on the foregoing, it is clear that where an accused commits various offenses in multiple transactions, on diverse dates, against multiple victims then consecutive sentences are applicable. However, where the offences arise out of the same incident or facts then a concurrent sentence is appropriate.

15. In the present case, all the offences committed by the applicant were out of a series of acts of the incident. The trial court ordered that all the sentences for the 8 counts do run concurrently.



16. In the circumstances I find no reason to vary the sentences meted out by the trial court.
17. As regards the provisions of section 333 (2) of the *Criminal Procedure Code*, the said section provides that: -

“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 of, 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.”

18. I have considered the entire record. The applicant was arrested on the 20/8/2022 and presented in court 2 days later. He his trial in custody and was sentenced on the 22/9/2022. It is clear that the Court did not comply with the provision of section 333(2) of the *CPC*.
19. Consequently, I uphold the trial court’s holding regarding the petitioner’s sentences running concurrently but order that the tabulation of the sentence of four (4) years shall run from 20/8/2022.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF OCTOBER, 2025.

A. MABEYA, FCI Arb

JUDGE

