

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION NO. E016 OF
2025

**VICTOR OTIENO OLUOCH ALIAS
PAPA.....APPLICANT**

VERSUS

REPUBLIC.....
....RESPONDENT

RULING

1. The Applicant was charged and convicted on two counts before the trial court, to wit:

a. Being in possession of explosives contrary to *Section 89(1) of the Penal Code*. The particulars of the offence were that on 19th of August, 2020 at about 0100hrs at Kayuyu village in Kisumu East Subcounty in Kisumu County within the Republic of Kenya, without reasonable excuse, the Applicant was found to be in possession of explosives, to wit one 2.1 tear gas intended to be used for a purpose prejudicial to public order.

b. Being in possession of public stores contrary to *Section 324(2) as read with Section 36 of the Penal Code*. The particulars of the offence were that on 19th of August,

2020 at about 0100hrs at Kayuyu village in Kisumu East Subcounty in Kisumu County within the Republic of Kenya, was found to be in possession of government stores, to wit one rain court valued at Ksh.1,200/- the property of the National Police Service.

2. Upon conviction, the trial court sentenced the Applicant to 7 years imprisonment on the 1st Count and to 2 years imprisonment on the 2nd Count. The court ordered that the sentences run consecutively from 21st August, 2020 when the Applicant was first remanded in custody, in line with *Section 333(2) of the Criminal Procedure Code*.
3. The Applicant, vide the Notice of Motion dated 17th January, 2025, now seeks an order for the review of his sentence, so that the sentences imposed run concurrently, rather than consecutively, as ordered by the trial court.
4. I have gone through the record of the lower court, which is before me, and note that from the evidence of the prosecution, the offences for which the Applicant was convicted were committed in the same transaction. The question that abounds is whether the trial court, in the circumstances, properly ordered that the two sentences to run consecutively.

5. The Court of Appeal, in the case of **David Jefwa Kalu v Republic [2007] KECA 254 (KLR)**, observed as follows, on the issue:

“But the offences on count one and count two were committed in one transaction and there was no legal basis for ordering that the sentences ought to run consecutively.

We set aside the order that the sentences are to run consecutively and instead order that the two sentences shall run concurrently. Of course, the sentences are to run from the 6th October, 1999 when the appellant was sentenced by the Magistrate.”

6. The jurisprudence provided by the authority above is that courts determine whether multiple sentences should run concurrently or consecutively by applying both statutory provisions, and I will add, the *Judiciary’s Sentencing Policy Guidelines*.

7. The relevant provision of statute is Section 14 of the Criminal Procedure Code, which states as follows:

14. 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, for those offences, to the several punishments prescribed 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.

(2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the offender for trial before a higher court.

(3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences—

(a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or

(b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose.

(4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.

8. Under *Section 14* of the *Criminal Procedure Code*, where a person is convicted of multiple offences at one trial, the court has discretion to order that the terms of imprisonment run either consecutively or concurrently. The *Section* provides that sentences ordinarily run consecutively, unless the court directs otherwise. This means that the statute gives the court latitude, but also establishes a default rule that consecutive terms may apply unless reasons exist for concurrency.
9. The *Judiciary's Sentencing Policy Guidelines* refine this discretion by setting out clear principles, by stating that sentences should run concurrently when the offences arise from the same transaction, are committed in a continuous sequence or form part of a single criminal enterprise.
10. The *Guidelines* further clarify that concurrency is appropriate where the criminal conduct is so closely linked that treating each count separately would exaggerate the offender's overall culpability.
11. Conversely, the *Guidelines* indicate that consecutive sentences are appropriate where offences are distinct in time, involve separate victims or constitute independent criminal

acts. This ensures that sentencing reflects the multiplicity and gravity of harm caused.

12. Thus then, in the matter before the trial court, concurrency was the proper approach as the offences were committed in the same transaction. Were the offences to be separate and/or be constituted of unrelated acts, the same would justify consecutiveness.
13. Trial/sentencing courts are therefore required to exercise their discretion judiciously, guided by *Section 14* of the *Criminal Procedure Code* and the *Judiciary's Sentencing Policy Guidelines*, to ensure that the final sentence(s) is/are proportionate, logical and fair in reflecting both the offender's conduct and the harm caused.
14. The result of my discussion above is that I reach the persuasion that the Applicant's application by Motion on Notice dated 17th January, 2025 is merited.
15. I proceed to allow the application, only to the extent that the trial court's order that the sentences are to run consecutively is hereby set aside and substituted with an order that the sentence of 7 years imprisonment in Count I and that of 2 years imprisonment in Count II, shall run concurrently, from 21st August, 2020.

16. This file is closed.

DELIVERED (virtually) DATED and SIGNED this 11th day of November, 2025.

JOE M. OMIDO

JUDGE

APPLICANT: Present, virtually.

RESPONDENT: **Ms. Muema.**

COURT ASSISTANTS: **Mr. Ngoe & Mr. Juma.**