Kariuki v Republic (Criminal Revision E385 of 2024) [2025] KEHC 17281 (KLR) (19 November 2025) (Ruling)

Neutral citation: [2025] KEHC 17281 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL REVISION E385 OF 2024

CW GITHUA, J

NOVEMBER 19, 2025

BETWEEN

HARRISON CHURU KARIUKI .... APPLICANT

AND

REPUBLIC .... RESPONDENT

RULING

1. In his undated Notice of Motion filed on his behalf by the officer in charge of Murang'a Main Prison, the applicant, Harrison Churu Kariuki sought revision of the sentence imposed on him by the lower court in Kangema Criminal Case No. E674 of 2023.
2. The court record shows that the applicant was convicted on his own plea of guilty of the offences of threatening to kill Contrary to Section 223 (1) of the Penal Code and injuring an animal Contrary to Section 338 of the Penal Code.
3. In the first count, it was alleged that on 25th November 2023 at Ichichi Location, Kangema Sub-County within Murang'a County, without a lawful excuse, the applicant uttered words threatening to kill Rose Wangechi Giteru who was his sister in law.
4. In the second count, the particulars were that on the same date, place and time, the applicant wilfully and unlawfully wounded an animal capable of being stolen namely a calf or heifer valued at Kshs.15,000 the property of Rose Wangechi Giteru.
5. Upon conviction, he was sentenced as follows;

    Count 1 – To serve three (3) years imprisonment.

    Count 2 – To serve seven (7) yeas imprisonment.

    The sentences were ordered to run consecutively.

6. In his application, the applicant urged this court to revise the aforesaid sentences by reducing them as in his view, they were harsh and excessive.

7. The application was opposed by the respondent through learned prosecution Counsel Ms. Muriu. Counsel supported the sentence meted out by the learned trial magistrate in each count arguing that the sentences were lawful and should not be disturbed; that when sentencing the applicant, the trial court exercised its discretion properly guided by the pre-sentence report as well as the victim impact assessment report.

8. In his rejoinder, the applicant did not directly respond to the respondent's submissions but he opined that the trial magistrate should have ordered that the sentences run concurrently instead of consecutively.

9. This being an application for sentence review, it invokes the courts revisional jurisdiction which is donated under Section 362 as read with Section 364 of the Criminal Procedure Code (CPC).

   Under Section 362 of the CPC, this court is empowered to call for and examine the record of the lower court to satisfy itself as to the correctness, legality or propriety of any order or sentence passed by the trial court.

10. . In applications of this nature, for an applicant to succeed in his application, he must demonstrate that in imposing the impugned sentence, the trial court committed an error of commission or omission by applying the wrong legal principles; considering extraneous factors or failing to consider relevant ones or that the sentence was plainly illegal as it was not in accordance with the law. The court can also revise the sentence if the applicant was able to establish that there was irregularity in the proceedings that resulted into the sentence.

11. In this case, other than claiming that the sentences passed against him were harsh and excessive, the applicant did not claim that the trial court erred in any way when passing the sentence he was requesting the court to review.

12. . On my part, I find nothing to fault the sentences imposed by the learned trial magistrate in each count. Besides the fact that the sentences were lawful as they were in accordance with the law, the circumstances in which the offences were committed justified imposition of the sentences.

13. . The circumstances reveal that the applicant had a violent disposition and would probably have maimed or killed the victim together with her children had they not locked themselves inside their house. It is because he was frustrated after he was unable to access the victim and her children that he proceeded to the cowshed in anger and slashed the heifer four times.

14. In sentencing the applicant, the court considered the pre-sentence report and the victim impact assessment report which were not favourable to the applicant. The pre-sentence report indicated that the applicant was a violent man who had a history of drug abuse; that he lived in the same compound with the victim and her family who expressed fear for their safety if the applicant was granted a non-custodial sentence.

15. Given such a report and considering the circumstances in which the offences were committed, I find that the sentences were lawful and well deserved as they served the dual purpose of protecting the rights and safety of the victim and giving the applicant an opportunity to benefit from prison rehabilitation programmes.

16. That said, although the applicant did not claim that the learned trial magistrate committed any error when sentencing him, upon my scrutiny of the court record, I have found that the learned trial

magistrate erred by failing to comply with the mandatory provisions of Section 333(2) of the Criminal Procedure Code (CPC) which requires that an offender be given credit for the time he had spent in lawful custody prior to the date he was sentenced. Put differently, the provision commands the sentencing court to take into account the period the offender had spent in lawful custody which should be applied to reduce the term of imprisonment imposed on the offender.

17. . In this case, the court record reveals that the applicant was arrested on 27th November 2023 and he remained in lawful custody till 15th May 2024 when he was sentenced. The learned trial magistrate should have taken into account the period of about 5 months the applicant had spent in lawful custody.

18. In addition, the trial court's direction that the sentences in each count should run consecutively was another error. The proceedings of the trial court leaves no room for doubt that the two offences were committed on the same date, at the same time and place and against the same victim. They were therefore offences committed in the course of the same transaction.

19. It is now trite as a matter of law and practice that where a person has been convicted of two or more offences charged in different counts but which were committed in the course of the same transaction, the sentences imposed in each count should run concurrently as opposed to consecutively.

    The Court of Appeal in BMN V Republic [2014] eKLR (Criminal Appeal No. 97 of 2013) when dealing with a similar situation pronounced itself as follows: -

    > " 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 "

20. In view of the foregoing, since it is evident that the two offences subject of the applicant's convictions were committed in the course of the same transaction, the learned trial magistrate should have ordered that the sentences imposed in each count were to run concurrently and not consecutively.

21. In the result, the applicant's application partially succeeds to the extent that the sentences imposed by the trial court shall run from 27th November 2023 when the applicant was arrested and the sentences shall run concurrently. The learned trial magistrate's order that the sentences shall run consecutively is hereby set aside.

    It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANGA THIS 19TH DAY OF NOVEMBER 2025.

HON. C. W. GITHUA

JUDGE

In the presence of:

The Applicant

Ms. Muriu for the respondent

Ms. Susan Waiganjo, Court Assistant