

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CRIMINAL REVISION NO. E019 OF 2025

**KARISA NGONYO MWAVUO.....APPLICANT
VERSUS**

REPUBLIC.....RESPONDENT

RULING

1. The Applicant herein was charged in Kaloleni Criminal Case No. E231 of 2024 with 5 counts of offences. He was convicted of 2 counts of the offence abducting with intent to confine contrary to Section 256 as read with section 259 of the Penal Code. The particulars of the first count are that on 14.5.23, at Marereni area in Malindi subcounty, within Kilifi County, with intent to cause Jackson Mangale Chikololo Finyo to be secretly and wrongfully confined, the Applicant abducted the said Jackson Mangale Chikololo Finyo. The particulars of the second count are that on 23.3.24, at Marereni area in Malindi subcounty, within Kilifi County, with intent to cause James Lewa Rumba to be secretly and wrongfully confined, the Applicant abducted the said James Lewa Rumba. He was sentenced to 4 years imprisonment for each of the counts, to run concurrently.
2. The Applicant was also convicted of the offence of assaulting a police officer in execution of the police officer's duties contrary to section 103(a) of the National Police Service Act. The particulars of this offence are that on 1.7.24, at Kaloleni township in Kaloleni subcounty within Kilifi County, in resisting lawful arrest from No. 85465 PC Paul Njuki and No. 125419 PC Dennis Kariuki, the Applicant assaulted No. 85465 PC Paul Njuki who at the time of the said assault was executing police officer's duties thereby occasioning him actual bodily harm. He was sentenced to pay a fine of Kshs. 100,000/= and in default to serve 2 years. This sentence was to run consecutively with the sentences in the other 2 counts. The trial court further directed that the sentences run from 29.7.24.
3. By his undated application, the Applicant seeks that the Court grants him probation orders and concurrent sentences considering that the offences were committed in a single transaction.
4. The Respondent opted not to file a response to the Application.
5. Section 4 of the Probation of Offenders Act confers upon courts the power to permit conditional release of offenders under probation. The provision further stipulates the

circumstances under which a probation order may be granted and the conditions that may be imposed. Section 4 provides in part as follows:

- (1) *Where a person is charged with an offence which is triable by a subordinate court, and the court thinks that the charge is proved but is of the opinion that, having regard to age, character, antecedents, home surroundings, health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may—*
 - (a) *convict the offender and make a probation order; or*
 - (b) *without proceeding to conviction, make a probation order, and in either case may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.*
- (2) *Where any person is convicted of an offence by the High Court and the court is of the opinion that, having regard to the age, character, antecedents, home surroundings health or mental condition of the offender, or to the nature of the offence, or to any extenuating circumstances in which the offence was committed, it is expedient to release the offender on probation, the court may, in lieu of sentencing him to any punishment, make a probation order, and may require the offender to enter into a recognizance, with or without sureties, in such sum as the court may deem fit.*

6. It is quite evident from the above provision, that where a charge is proved in a subordinate court or the High Court convicts a person and forms the opinion, after considering the factors listed, that it is expedient to release the offender on probation, the court may make a probation order *in lieu* of sentencing him to any punishment. A reading of the above provision makes it clear that the power to grant probation orders can only be exercised by the trial court. This power cannot be invoked post-conviction and sentence or pursuant to an application such as the one before this Court. Accordingly, the prayer is found to be without merit.
7. The Applicant also seeks that this Court reviews the sentences imposed upon him so that the same run concurrently and not consecutively as ordered by the trial court.
8. Section 14 of the Criminal Procedure Code provides for circumstances in which a court can direct that sentences run consecutively as follows:

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.

9. In Peter Mbugua Kabui v Republic [2016] KECA 713 (KLR), the Court of Appeal stated:
- 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.*
- In the instant case, the offences were not committed at the same time and in the same transaction; they occurred on diverse dates. Furthermore, the acts complained of were perpetrated against different complainants. Thus we find that the trial court and the High Court did not err in directing or ordering a consecutive term of imprisonment for the conviction in the two counts.*
10. In the instant case, contrary to the Applicant's assertion, the offences were not committed in a single transaction. The first 2 counts of abducting with intent to confine were committed on different dates namely 14.5.22 and 23.3.24 and the victims were 2 different persons, namely Jackson Mangale Chikololo Finyo and James Lewa Rumba respectively. The offence of assaulting a police officer in execution of the police officer's duties was committed on 1.7.24 and the complainant was No. 85465 PC Paul Njuki. In light of the foregoing, I find no merit in the prayer for the sentences to run concurrently.
11. In the end and for the reasons stated, the Application herein lacks merit and the same is dismissed.

DATED SIGNED and DELIVERED in MALINDI this 28th day of November 2025

M. THANDE
JUDGE