



**Njue v Republic (Criminal Revision Application E296 of 2025)
[2026] KEHC 564 (KLR) (28 January 2026) (Judgment)**

Neutral citation: [2026] KEHC 564 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION APPLICATION E296 OF 2025
RM MWONGO, J
JANUARY 28, 2026**

BETWEEN

DUNCAN MUNYI NJUE APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

The Application

1. Through an undated motion, the applicant is seeks the following orders:
 1. That following conviction and sentencing, the court revises the orders of the trial court by ordering that the sentences run concurrently;
 2. That the court orders an option for payment of a fine;
 3. That the court substitutes the order of custodial sentence to a non-custodial sentence as provided under sections 4(2), 5 and 6 of the *Probation of Offenders Act* for the remainder of the sentence
2. The application is supported by grounds to the effect that the applicant is the sole breadwinner of his family and that he is a first offender. That he is remorseful and has exhibited high standards of discipline during his incarceration.

Background of the case in the trial Court

3. In the trial Court, the applicant was charged with 3 counts; the first count being housebreaking contrary to section 304(1)(a) of the Penal Code; the second was stealing in a dwelling house contrary to section 279 of the Penal Code, and the third was being in possession of suspected stolen property



contrary to section 323(1) of the Penal Code. The alternative charge to the second count was handling stolen goods contrary to section 322(1)(2) of the Penal Code.

4. He was acquitted of the first and second counts, but was convicted for both the alternative charge to the second count and the third count. He was sentenced to 5 years imprisonment on the alternative to the second count and 2 years imprisonment on the third count. The trial Court ordered that the sentences run concurrently.

Parties' Submissions

5. The present application was canvassed by way of written submissions as ordered by this Court.
6. In his submissions, the applicant urged the court to apply its discretion in the matter according to Article 165 of *the Constitution*, Section 35 of the Penal Code and the Judiciary Sentencing Policy Guidelines. He argued that he was a first offender aged 19 years old who is an orphan and the sole breadwinner of his family. That he was remorseful and thus, prayed for the court's leniency.
7. The respondent, in its submissions, admitted that the court had jurisdiction to determine the application through its revisionary powers bestowed upon it under sections 362-366 of the Criminal Procedure Code. It argued that the trial court did not impose the maximum sentences provided under the penal sections. It relied on the case of Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR) and argued that the trial court had already exercised leniency in sentencing hence the sentences cannot be held as harsh and excessive.

Issue for Determination

8. The issue for determination is whether the application has merit.

Analysis and Determination

9. The revisionary power of the High Court is drawn from its supervisory jurisdiction grounded in Article 167(6) & (7) of *the Constitution* which provides:
 - “(6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
10. Section 362 of the Criminal Procedure Code provides as follows on the High Court's revisionary criminal jurisdiction:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”
11. In this case, the applicant has challenged the sentences imposed by the trial court and seeks that an order be made: that the sentences should run concurrently; or that the custodial sentences should be



set aside on the strength of sections 4, 5 and 6 of the *Probation of Offenders Act*; or that he be given the option for payment of a fine.

12. On a perusal of the sentencing ruling, it is noted that the trial Magistrate sentenced the applicant to 5 years imprisonment on the alternative to the second count and 2 years imprisonment on the third count. The trial court directed as follows on how the sentences would run:

“On the charge of handling stolen goods sentenced to serve five (5) years imprisonment.

On the Count III charge of being in possession of suspected stolen property accused is sentenced to serve Two (2) years imprisonment. The sentences to run concurrently. Section 333(2) Criminal Procedure Code to apply to the sentence. Right of appeal 14 days. The sentences to run consecutively.” [Emphasis added]

13. It is noted that, within the same ruling, the trial court ordered both concurrent and consecutive running of the sentences imposed. With both positions stated, it remains unclear as to what was on the mind of the trial court which leads to confusion and injustice. This must, therefore be adjudged as an apparent error on the face of the court’s record since there is no clarity as to whether the sentences should run concurrently or consecutively.

14. The law gives the trial court discretion to order concurrent or consecutive running of sentences as it deems fit. However, the default position in law is that when the sentences are imposed, where the offences arose from the same transaction, they shall run one after another. Section 14 of the Criminal Procedure Code provides thus:

“(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.” [Emphasis added]

15. From a reading of the charge sheet, the offences for which the applicant was convicted and sentenced arose from the same transaction. It means that the sentences imposed by the trial court ought to run consecutively; one after the expiration of the other, unless the Court directs otherwise. To this end, the orders of the trial court as to consecutive and concurrent sentences in the sentencing ruling must to be revised accordingly.

16. As to whether the court should apply the provisions of the *Probation of Offenders Act*, the same would be applicable depending on the court in which the matter was tried. In this case, the offences for which the applicant was convicted were tried before a subordinate court. Section 4(1) of the *Probation of Offenders Act* applies. The provision is as follows:

“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.” [Emphasis added]

17. According to this provision, the factors for consideration are to be taken into account after conviction but before an offender is sentenced. In this case, the applicant was in fact sentenced by the trial Court on 20/03/2025 and he is in the process of serving the imprisonment terms. Therefore, a probation order cannot be made at this stage of the case, and the provision does not apply.
18. As to whether the applicant can be subjected to a fine in place of the custodial sentences imposed, under section 322(2), a person who handles stolen goods is guilty of a felony and is liable to imprisonment with hard labour for a term not exceeding fourteen (14) years. In the applicant’s case, the trial court in fact sentenced him to 5 years imprisonment, a substantial departure from the statutorily prescribed sentence. The third count was an offence under section 323 of the Penal Code which provides:
- “Any person who has been detained as a result of the exercise of the powers conferred by section 26 of the Criminal Procedure Code (Cap. 75) and is charged with having in his possession or conveying in any manner anything which may be reasonably suspected of having been stolen or unlawfully obtained, and who does not give an account to the satisfaction of the court of how he came by the same, is guilty of a misdemeanor.”
19. Section 4 of the Penal Code provides that “misdemeanor” means any offence which is not a felony. In the same provision, “felony” means an offence which is declared by law to be a felony or, if not declared to be a misdemeanor, is punishable, without proof of previous conviction, with death, or with imprisonment for three years or more. This provision was correctly interpreted by the trial court to mean that the third count was punishable with imprisonment for less than 3 years. Therefore, the 2-year imprisonment term imposed is legal and lawful and should not be interfered with.
20. Moreover, section 26(3) of the Penal Code provides that a person liable to imprisonment for an offence may be sentenced to pay a fine in addition to or in substitution for imprisonment, provided that where the law concerned provides for a minimum sentence of imprisonment, a fine shall not be substituted for imprisonment. The trial Court in its wisdom meted only an imprisonment term and gave no option of a fine.

Conclusion and Disposition

21. Ultimately, sentencing is a matter for the discretion of the trial court, and such discretion was in fact exercised by the trial court. As a result, the custodial sentences cannot, at this point in time, be replaced with an option of a fine.
22. In the result, the application succeeds partially. Accordingly, I order that the sentences imposed by the trial court shall run consecutively in terms of section 14 of the CPC.
23. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 28TH DAY OF JANUARY, 2026.

R. MWONGO

JUDGE

Delivered in the presence of:



Applicant Present at Mwea Prison
Ms. Mwaniki for the Respondent
Francis Munyao - Court Assistant

