

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT EMBU**  
**(CORAM: R. MWONGO, J.)**  
**CRIMINAL REVISION APPLICATION NO. E301 OF 2025**

NGINYANE MWANZIA NZUKI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

**R U L I N G**

**Background**

1. In the lower court, applicant was charged with the offence of causing grievous harm contrary to section 234 of the Penal Code and stealing contrary to section 268 of the Penal Code. He was tried and convicted of both charges. Afterwards, he was sentenced to 7 years imprisonment for causing grievous harm and 2 years imprisonment for stealing. The trial court ordered that the sentences run consecutively.

**The Application**

2. Through the present revision application, the applicant is seeking for an order that the sentences imposed by the trial court should run concurrently because the offences arose from the same transaction, against the same complainant and they were on the same charge sheet. He stated that he is remorseful and he is a first offender.
3. That he has reformed during his incarceration and he has acquired useful skills from the prison authorities and his fellow inmates. He also stated that he has since reconciled with the complainant who told him that they were not aware of any alternative dispute resolution mechanism available to them before the matter was taken to court.
4. The respondent did not file any response to the application but it filed written submissions.

**Written Submissions**

5. The application was canvassed by way of written submissions.
6. In his submissions, the applicant relied on sections 12 and 14 of the Criminal Procedure Code and the case of **Sawedi Mukasa s/o Abdulla Aligwaisa v Republic (1946) 13 EACA 97** where the court held that the practice is that where

a person commits more than 1 offence within the same transaction, the sentences should run concurrently unless there are exceptional circumstances. He urged the court to take this direction and consider the fact that he is a first offender, is remorseful and he has reconciled with the complainant.

7. The respondent, on its part, relied on section 362-366 of the Criminal Procedure Code and the case of **Republic v Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 others (Amicus Curiae) [2024] KESC 34 (KLR)**. It urged the court not to alter the sentences because leniency was already exercised and there is no legal basis for reviewing the sentences unless the guiding provisions of law are declared unconstitutional. It also cited Guideline 2.3.26 of the Judiciary Sentencing Policy Guidelines and argued that a consecutive sentence is the fairest in the circumstances.

### **Issue for Determination**

8. The issue for determination is whether the sentences imposed by the trial court should be revised.

### **Analysis and Determination**

9. The revisionary power of the High Court is drawn from its supervisory jurisdiction 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. Sections 362 - 366 of the CPC then provide for the High Court's Criminal revisionary jurisdiction. Section 362 of the Criminal Procedure Code provides as follows:

***“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. These provisions do not limit the kind of orders that may be considered by the High Court in revision, hence an order on sentence is one of those that can ordinarily be revised. The court, in exercise of trial jurisdiction can entertain the applicant's application.
12. The applicant was sentenced to 7 years imprisonment after being convicted of causing grievous harm. Section 234 of the Penal code provides that such an offender is liable to imprisonment for life. In addition, he was sentenced to 2 years imprisonment for stealing, the sentences running consecutively.
13. The applicant's question to the court is whether the terms of the sentence can be reviewed from running consecutively to running concurrently. The presumption at the point of sentencing for multiple offences is that the sentences will run consecutively. 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.”***

14. To state whether the sentences run concurrently or consecutively is a preserve of the trial/sentencing court and it specifies this through its discretion. In addition, the Court is guided by the **Judiciary Sentencing Policy Guidelines 2023** which provides as follows:

***“2.3.21 Notwithstanding the provisions under the Criminal Procedure Code and the Penal Code summarized in paragraph 2.3.4 above, the discretion to impose concurrent or consecutive sentences lies with the court. There are two elements to the concept of totality, and these apply as much to terms of imprisonment as they do to community service and fines.”***

## **Conclusion and Disposition**

15. In the applicant's case, the trial court stated as follows:

***“...count 1: imprisonment for 7 years. Count 2: imprisonment for 2 years with ROA in 14 days. The sentences to run consecutively in any event.”***

16. The discretion to pronounce concurrent or consecutive sentences is left to the trial court by law and in this case that discretion was aptly exercised. The exercise of that discretion is in accordance with the law. The sentence meted by the lower court was lawful. In the premises, therefore, the application lacks merit and is hereby dismissed.

17. Orders accordingly.

**Delivered, dated and signed at Embu High Court this 11<sup>th</sup> day of February, 2026.**

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**R. MWONGO  
JUDGE**

**Delivered in the presence of:**

1. Applicant Present in Court
2. Ms. Mwaniki for the Respondent
3. Francis Munyao - Court Assistant