

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT CHUKA**  
**MISC. CRIMINAL APPLICATION NO. E031 OF 2024**

**MARK MUTUGI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDEN  
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**R U L I N G**

1. Mark Mutugi (Applicant) filed the present undated application seeking an order that the two sentences he was serving be deemed to run concurrently. He stated that he was convicted of the offence of stealing in Chuka CMCC No.215 of 2023 and sentenced on 4<sup>th</sup> March 2023 to serve 3 years' imprisonment. That subsequently he was charged and convicted of the offence of burglary and

sentenced to serve 3 years' imprisonment from 24<sup>th</sup> March 2023.

2. The Applicant stated in his supporting Affidavit that section 12 of the Criminal Procedure Code empowered the court to combine his two sentences to run concurrently.

3. The Application was canvassed through written submissions. The Applicant's undated submissions were received in court on 28<sup>th</sup> July 2025, while the Respondent's submissions dated 13<sup>th</sup> November 2025, were filed on 14<sup>th</sup> November 2025.

4. The Applicant urged that section 12 of the Criminal Procedure Code allowed the court to combine any lawful sentences. He stated that he was aggrieved that the prisons department had computed his two sentences to run consecutively meaning that he will

spend 6 years in prison. He further urged that if left unamended the sentence would continue to violate his rights.

5. The Applicant further submitted that he was a first offender. That he pleaded guilty and saved the court's time; had no prior criminal record, and; that the court should be guided by section 333(1) and (2) of the Criminal Procedure Code.

6. The Respondent opposed the Application on the grounds that the offences were distinct and unrelated with two different complainants; were committed on different dates in different factual circumstances, and; were tried separately.

7. The Respondent further submitted on the applicable legal framework and identified the only issue for determination to be whether the court should order

that the sentences in Chuka Criminal Case No. E216 of 2023 and Chuka E215 of 2023 run concurrently.

### **Analysis and determination**

8. This court's revisionary jurisdiction is provided for under Sections 362-364 of the Criminal Procedure Code as follows:-

**“362. 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.**

**“364. (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported**

**for orders, or which otherwise comes to its knowledge, the High Court may -**

**(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;**

**(b) in the case of any other order other than an order of acquittal, alter or reverse the order.**

**(c) -**

**(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:**

**Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a**

**sentence which it was required to pass under the written law creating the offence concerned.**

**(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.**

**(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.**

**(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of**

**the party who could have appealed.”**

[Underline mine]

9. In this case, I called for and examined the trial record. In Chuka Magistrate’s Court Criminal Case No. E216 of 2023, the Applicant alongside 6 other Accused, was charged before Hon. Kinyua (R.M) with the offence of stealing. They took plea on 24<sup>th</sup> March 2023 and pleaded not guilty. When the case came up for trial on 10<sup>th</sup> May 2023, they changed plea and each pleaded and were convicted on their own plea of guilty. Each was given an opportunity to mitigate and each was sentenced to serve 3 years’ imprisonment.
10. The trial court, in sentencing the accused stated that the crime of stealing was rampant and called for a deterrent sentence.

11. I have considered the record as above. I have found nothing irregular or unlawful in either the proceedings or the sentence.
12. With respect to Criminal Case No. E215 of 2023, the Applicant alongside his team were charged before Hon. Mwendwa (PM) with the offence of burglary and stealing. They were convicted and sentenced to serve 3 years imprisonment. Again, I have closely examined the trial file and found nothing irregular in the proceedings or sentence.
13. Section 14(1) of the Criminal Procedure Code provides:-

**“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 therefore 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.”**

[Underline mine]

14. In this case, as borne by the record and as submitted by the Respondent, the Applicant was charged with and convicted of two distinct offences in two separate trials. Each trial court legally executed their mandate. The law relied on by the Applicant unfortunately cannot come to his aid. The two cases arose from two separate transactions where there were different complainants.

15. I am persuaded by the case of **Republic vs. Zaaphaniah Ouma [2019] eKLR**, where the court held:-

**“Concurrent sentences are appropriate only where offences arise from the same transaction. Where they arise from distinct incidents, sentences must run consecutively to reflect each criminal act.”**

16. In the end, it is my finding that the Application is not merited. It is dismissed.

Orders accordingly.

**Ruling delivered, dated and signed at Chuka this 26<sup>th</sup> day of February, 2026.**

.....  
**R. LAGAT-KORIR**  
**JUDGE**

**Ruling delivered in the presence of the Applicant present acting in person, Ms Rukunga for the Republic; Muriuki (Court Assistant).**