

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUNGOMA

CRIMINAL APPEAL NO E045 OF 2022

BRIAN WANJALA MURUNGA.....

APPELLANT

VERSUS

REPUBLIC.....

RESPONDENT

***(Being an appeal against the sentence of Hon. Manasses
(RM) delivered on 19/2/2024 in the Senior Resident
Magistrate's Court at Sirisia, criminal case No. E068 OF
2024)***

JUDGMENT

1. The appellant was charged and convicted of the following counts:

COUNT I: Burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the Penal Code.

COUNT II: Burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the Penal Code.

COUNT III: Burglary contrary to section 304 (2) and stealing contrary to section 279 (b) of the Penal Code.

2. The appellant pleaded guilty to the three charges set out above in Criminal Case No. E055 OF 2024. In Criminal Case No. E104 of 2024, the appellant was charged with the offence of

“Stealing contrary to section 268 as read with section 275 of the Penal Code”. He pleaded guilty, was convicted, and was sentenced to three years' imprisonment on 19.2.2024.

3. The appellant aggrieved by the sentence has filed this appeal, arguing that it was excessive. In his submissions, he took the position that the sentences ought to run concurrently.

4. The prosecution argues that the appellant was sentenced to 9 years' imprisonment, whereas the Penal Code provides for a maximum sentence of 14 years. Therefore, the sentence was lawful and should be upheld.

ANALYSIS AND DETERMINATION

5. This is an appeal against sentence. The Court of Appeal, in *Bernard Kimani Gacheru vs. Republic* [2002] eKLR, stated that:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

6. The trial magistrate held that the sentences imposed on the appellant were to run consecutively in Criminal case no. E055 of 2024. The Court of Appeal, in Peter Mbugua Kabui vs Republic [2016] eKLR, expressed itself on the subject of when a consecutive or concurrent sentence should apply:

“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.”

7. The facts, according to the prosecution, were that:

“...Accused, without any lawful reason, gained entry and, with intent to steal, he stole one small black bag with Kshs 250 in and a national ID belonging to Irene, two black trousers belonging to Ruth and Sports shoes belonging to Isaack Orero. He left the house, but before he went far, he stole a black trouser on the hanging line, belonging to Enock Pkatan...”

8. The offences arose from a single transaction. Therefore, the sentences should run concurrently. The Sentencing Policy Guidelines on whether a court should impose consecutive or concurrent sentences provide as follows:

7.13 Where the offences emanate from a single transaction the sentences should run concurrently. However, where the offences are committed in the course of multiple

transactions and where there are multiple victims, the sentence should run consecutively.

9. The upshot is that the appeal is meritorious. The 3-year sentence imposed by the trial court on the 1st, 2nd and 3rd counts shall run concurrently in **Criminal Case No. E055 of 2024.**

10. The offence in Criminal Case No. E014 OF 2024 occurred on 11.1.2024, an earlier date. The appellant will serve this sentence, followed by the sentences in Criminal Case No. E005 OF 2024. For avoidance of doubt, the total sentence is six (6) years' imprisonment.

Dated, Signed, and Delivered at BUNGOMA this 19th day of February 2026.

**R.E. OUGO
JUDGE**

In the presence of:

Brian Wanjala Murunga/ Appellant

Miss Matere

-For the Respondent

Wilkister

-C/A