



**Mugambi v Republic (Criminal Revision Application
E365 of 2025) [2026] KEHC 2989 (KLR) (4 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2989 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION APPLICATION E365 OF 2025**

RM MWONGO, J

MARCH 4, 2026

BETWEEN

NJAGI ERICK MUGAMBI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with 4 counts including 2 counts of stealing contrary to section 268 of the [Penal Code](#) in counts 2 and 4 of the charge sheet. He was tried and eventually convicted and sentenced to 1-year imprisonment on count 2, and 2-years imprisonment on count 4, the sentences running consecutively.

The Application

2. Through an application filed on 03rd July 2025, the applicant is seeking that the court substitutes his custodial sentence into a non-custodial sentence in compliance with sections 26(2) and 38 of the [Penal Code](#) and sections 4(2), 5 and 6 of the [Probation of Offenders Act](#). He is also seeking that the court reviews the sentences downward.
3. The applicant stated that he is a 19-year-old learner at a Polytechnic who is a first offender with no other criminal record. He stated that since his incarceration, he has fully reformed while in prison and on this basis, he urged the court to exercise leniency in determining the application.

Response

4. The respondent did file any response to the application but it filed its written submissions.



Parties' Submissions

5. In his submissions, the applicant argued that the trial court should have sentenced him to concurrent sentences since the offences arose from the same transaction. He relied on the case of *Sawedi Mukasa s/o Abdulla Aligwaisa v Republic* (1946) 13 EACA 97 where the court stated as much. He urged the court to substitute the custodial sentence with a non-custodial sentence considering that he has reformed and he remains remorseful.
6. The respondent acknowledged the jurisdiction of the High Court on revision cases as bestowed under section 362-366 of the *Criminal Procedure Code*. It argued that the trial court had already exercised leniency during sentencing and had departed from the 3 years imprisonment sentence prescribed under section 275 of the *Penal Code*. That the objectives of the sentences imposed have been attained as guided by the *Judiciary Sentencing Policy Guidelines*.
7. It relied on the case of *Bernard Kimani Gacheru v Republic* [2002] KECA 94 (KLR) where the Court of Appeal warned against interfering with sentences imposed by the trial court unless they were manifestly excessive or a material factor was overlooked. It was its submission that the discretion to order that the sentences should run concurrently or consecutively lay with the trial court and it already exercised its discretion in that regard.

Issues for determination

8. The issues for determination are the following:
 1. Whether the trial court's decision to order consecutive sentences should be revised; and
 2. Whether the sentences meted out by the trial court can be reduced and substituted with non-custodial sentences under the *Probation of Offenders Act*.

Analysis and Determination

9. The revisionary power of the High Court is drawn from Article 167(6)&(7) of the *Constitution* which provide:
 - “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 supervisory 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 was sentenced on 2 counts of stealing following conviction. On one count, he was sentenced to 1-year imprisonment and on the other, to 2 years imprisonment, the sentences running consecutively. From a perusal of the charge sheet, the offences occurred on the same day, at the same time, in the same location. However, 2 different people were the victims.
12. A trial court reserves the right to order that the sentences run concurrently or consecutively. However, the position in law is that sentences should run consecutively unless a court orders that they run concurrently. Section 14(1) of the [Criminal Procedure Code](#) provides:

“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.”
13. In the case of [Peter Mbugua Kabui v Republic](#) [2016] KECA 713 (KLR) the Court of Appeal expressed itself on the subject as to 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.”
14. In [Marsack v Republic](#) [2025] KEHC 6807 (KLR) the court ordered that several sentences run concurrently, setting aside the trial court’s order that the sentences should run consecutively. In that case, the court stated:

“Similarly, in [Sawedi Mukasa s/o Abdulla Aligwaisa \(supra\)](#), the Court of Appeal for Eastern Africa considered the issue of a consecutive as opposed to a concurrent sentence and expressed the view that it was still good practice to impose concurrent sentences where a person commits more than one offence at the same time and in the same transaction save in very exceptional circumstances.

Further guidance can be drawn from the [Judiciary Sentencing Policy Guidelines](#) which contain specific provisions explaining circumstances when a court should impose consecutive or concurrent sentence. The [Guidelines](#) 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”.
15. Even though the decision to order consecutive sentences remains in the discretion of the trial court, the guidance of the [Judiciary Sentencing Policy Guidelines](#) is key. In this case, the sentences should run concurrently given that the offences arose from the same transaction.



16. As to whether the provisions of sections 4, 5 and 6 of the *Probation of Offenders Act* should apply so as to change the custodial sentence into non-custodial sentences, several factors come into play. Section 4(1) of the *Probation of Offenders Act* provides:

“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.”

17. According to this provision, the factors for consideration for probation should be taken into account after conviction but before an offender is sentenced. In this case, the applicant was already sentenced and he is presently serving the imprisonment terms. Thus, the provision does not apply, and a probation order cannot be made at this stage.

Disposition

18. The application hereby succeeds partially. Accordingly, it is ordered that the orders of the trial court issued on 24th February 2025 that the sentences imposed should run consecutively are hereby set aside and substituted with an order that the sentences imposed shall run concurrently;

19. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 04TH DAY OF MARCH, 2026.

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R. MWONGO

JUDGE

Delivered in the presence of:

Applicant present in Court.

Ms. Mwaniki for the Respondent.

Francis Munyao - Court Assistant.

