

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT EMBU
(CORAM: R. MWONGO, J.)
CRIMINAL REVISION CASE NO. E340 OF 2025

PENUEL NJUE.....
.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

R U L I N G

Background

1. The applicant was charged in the subordinate Court with 2 counts namely: forgery contrary to section 345 of the Penal Code and obtaining money by false pretenses contrary to section 313 of the Penal Code. He was convicted of both counts and sentenced to pay a fine of Kshs.150,000/= in default 1 year imprisonment for each of the counts.

The Application

2. Through the present undated revision application, the applicant is seeking for more lenient sentences besides the sentences meted out by the trial court. He has urged the court to consider reducing the fines imposed to a lesser amount and to release the applicant to serve a non-custodial sentence for the remaining period of the sentences in default.
3. The application is premised on grounds that he is the sole breadwinner of his family. That his children will suffer and lack proper schooling if he continues staying in custody. He was remorseful and stated that he was a first offender with no prior criminal record.
4. The respondent did not file any response to the application but it filed written submissions.

Parties' Submissions

5. In his submissions, the applicant argued that the offences were committed within the same transaction and so the court should have ordered that the sentences run concurrently. According to him, the order by the trial court that the sentences run consecutively was based on wrong principles of law and it should be set

aside. He submitted that he is suffering from asthma which is not properly managed in prison. He urged the court to order that the sentences run concurrently.

6. On its part, the respondent acknowledged the revisionary jurisdiction of the court as bestowed under sections 362-366 of the Criminal Procedure Code. It submitted that the sentences imposed are not the maximum sentences prescribed by the law. It relied on the case of **Gichuki v Republic [2024] KEHC 9406 (KLR)** and Guideline 2.3.26 of the Judiciary Sentencing Policy Guidelines.

Issue for Determination

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

Analysis and Determination

8. The revisionary power of the High Court is drawn from 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.”

9. Section 362 of the Criminal Procedure Code provided 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.”

10. 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 that can be revised. Thus, this court has jurisdiction to entertain the applicant’s application.

11. Following conviction, the applicant was sentenced to pay a fine of Kshs.150,000/=, or in default, 1-year imprisonment on each of the counts. From a perusal of the trial court's proceedings, the court did not specify whether the sentences would run consecutively or concurrently. The applicant's prayer is that the sentences ought to run concurrently.

12. The legal 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.” (Emphasis added)

13. It is noted that wherein sentences are in the form of imprisonment in default of payment of a fine, section 37 of the Penal Code provides:

“Where a person after conviction for an offence is convicted of another offence, either before sentence is passed upon him under the first conviction or before the expiration of that sentence, any sentence, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed after the expiration of the former sentence, unless the court directs that it shall be executed concurrently with the former sentence or any part thereof:

Provided that it shall not be lawful for a court to direct that a sentence of imprisonment in default of payment of a fine shall be executed concurrently with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.”

14. This position is buttressed by guideline 2.3.28 which states: ***“In the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a previous sentence.”***

15. To state whether the sentences run concurrently or consecutively is a preserve of the trial/sentencing court and it specifies this through its discretion as provided under the **Judiciary Sentencing Policy Guidelines 2023** as follows:

“2.3.21 Notwithstanding the provisions under the Criminal Procedure Code and the Penal Code summarised 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.”

16. Given the foregoing discussion, the sentences imposed by the trial court, which are imprisonment in default of the payment of fines, cannot run concurrently, since to make such an order would be unlawful.

17. On the applicant’s question of whether the fines imposed can be reduced, section 28(1)(b) of the Penal Code gives the trial court discretion to impose a fine as it deems just. Given the circumstances of the case, the fines imposed are just and there is no basis to review them downwards.

Disposition

18. In line with section 14 CPC, since the applicant was convicted of two distinct offences at one trial, the sentences are presumed by the law to run one after the expiration of the other, unless the Court directs that they should run concurrently. Since the trial court made no order on concurrency, the sentences are deemed to be consecutive.

19. Accordingly, the application fails in its entirety.

20. Orders accordingly.

Delivered, dated and signed at Embu High Court this 04th day of March, 2026.

**R. MWONGO
JUDGE**

Delivered in the presence of:

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