



**Mugendi v Republic (Miscellaneous Criminal Application
E043 of 2024) [2026] KEHC 2500 (KLR) (26 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2500 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E043 OF 2024**

**RL KORIR, J
FEBRUARY 26, 2026**

BETWEEN

KELVIN MUGENDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Kelvin Mugendi (Applicant) filed the present undated application seeking an order that the two sentences he was serving pursuant to two convictions and sentences be combined and ordered to run concurrently. He complains that the prison authorities computed his two sentences to run consecutively meaning that he will spend 6 years in prison. He relies on section 12 of the Criminal Procedure Code.
2. In undated written submissions received in court on 28th July 2024, the Applicant submits that he pleaded guilty to both offences and was sentenced to serve 3 years for each offence and that the prison authorities had, contrary to law, computed the sentences to run consecutively. He urged the court to recall the two warrants committing him to jail and order that the sentences run concurrently.
3. The Applicant further submitted that he was remorseful; was a first offender; that he pleaded guilty and saved court’s time; and that he was a youth.
4. 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.
5. 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

6. 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.”

7. 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 24th March 2023 and pleaded not guilty. When the case came up for trial on 10th 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.

8. The trial court, in sentencing the accused stated that the crime of stealing was rampant and called for a deterrent sentence.
9. I have considered the record as above. I have found nothing irregular or unlawful in either the proceedings or the sentence.
10. 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.
11. 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]

12. 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 which I have reproduced above cannot come to his aid. The two cases arose from two separate transactions where there were different complainants and the trials were separate and distinct.
13. 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.”

14. 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 26TH DAY OF FEBRUARY, 2026.

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R. LAGAT-KORIR

JUDGE

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

