

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC. CRIMINAL APPLICATION NO. E057 OF 2025

BERNARD MUTISO LUCIA
APPELLANT

VERSUS

REPUBLIC
RESPONDENT

RULING

1. The applicant has moved this court by way of a notice of motion application seeking a review of the sentenced imposed in Kangundo Criminal Case No E601 of 2023. He depones that he was sentenced to serve a term of seven years imprisonment for the offence of breaking into a building. He urged that he has since reformed, acquired grade 1 building 1 skill and wishes to reintegrate into society to fend for his family, his child and mother. He further states that he has only two years left to serve.
2. The respondent opposed the application, contending that the no sufficient reason has been advanced to warrant revision, and that the sentence imposed was already lenient.
3. The record shows that the applicant, together with another accused not before this court, were charged with two counts; count 1, the offence of breaking into a building and committing a felony contrary to section

306(a) of the Penal code. The particulars were that on the night of 29th May 2023 and 30th May 2023 at Tala township in Matungulu Sub-County within Machakos County, jointly with others not before court broke and entered the building namely a shop of Pauline Nthenya Muia and committed there in a felony namely theft. On count two he was charged with the offence of stealing contrary to section 268 as read with section 275 of the Penal code. The particulars were that on the night of 29th and 30th May 2023 at Tala township in Matungulu Sub-County within Machakos County, jointly with others not before court stole assorted clothes all valued at kshs 300,000/- the property of Pauline Nthenya Muia. In the alternative the applicant was charged with the offence of handling stolen goods contrary to section 322(1) as read with section 322(1) of the Penal Code. The particulars are that on 31st day of May 2023 at Sengani village Matungulu sub-county within Machakos County, otherwise than in the course of stealing dishonestly retained or received assorted clothes knowing or having reason to believe them to be stolen goods the property of Pauline Nthenya Muia.

4. The applicant pleaded guilty on both counts. Upon the facts being read out; he was convicted on his own plea of guilty. He was sentenced to 5 years imprisonment for count one and 2 years imprisonment or a fine of kshs.100,000/- for count two, with the sentences ordered to run consecutively.

5. Upon the perusal of the trial court record, this court notes that the facts upon which the applicant was convicted emanates from the same transaction. The offences of breaking into a building and stealing were committed in one continuous sequence against a single victim.
6. The Court of Appeal in **Peter Mbugua Kabui v. R [2016] KLR** reiterated that sentences for offences committed in the same transaction should run concurrently. Similarly paragraph 7.13 of the Sentencing Policy Guidelines, provides that concurrent sentences are appropriate where offences arise from a single transaction, while consecutive sentences are reserved for offences arising from multiple transactions or involve multiple victims.
7. Guided by the above, this court finds that the trial court erred in ordering consecutive sentences where the offences clearly arose from the same transaction. The imposition of consecutive terms in such circumstances results in an excessive and disproportionate punishment. Thus, this court will correct the irregularity in sentencing by aligning it with established jurisprudence and sentencing guidelines so as to ensure proportionality, fairness and consistency in the administration of justice, while still reflecting the seriousness of the offence committed.
8. Accordingly, this court makes the following orders;

- a. The sentence imposed on the applicant shall run concurrently
- b. The sentence will deemed to have commenced on 31st May 2022 being the date of arrest, since the applicant remained in custody from that date
- c. The applicant shall therefore serve a total term of five years imprisonment, subject to remission as provided by law.

It is so ordered.

Dated, signed and delivered at Machakos this 9th day of April, 2026

RHODA RUTTO
JUDGE

In the presence of;

.....Applicant

.....Respondent

Selina Court Assistant