

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MURANG'A**

**CRIMINAL REVISION CASE NO. E170 OF 2025**

**ALEX MACHARIA WACHOGI .....**

**.....APPLICANT**

**VERSUS**

**REPUBLIC.....**

**RESPONDENT**

**RULING:**

1. Vide the undated Notice of Motion application, the applicant ALEX MACHARIA WACHOGI has sought for revision of sentence an order on the same to run concurrently.
2. The application has been brought under the provision of **Section 362 -364 of the Criminal Procedure Code** on the grounds that the Applicant is a first offender and is highly remorseful of the offences he was convicted for. The Applicant has stated that the offence he was convicted for occurred simultaneously within the same physical and temporal context, clearly constituting a single transaction and this ought to run concurrently as provided for under **Section 14 of the Criminal Procedure code**. The Applicant has also sought for the period/time he spent in remand to be taken into consideration pursuant to **Section 333 of the Criminal Procedure Code**.

3. The Respondent, through its learned counsel, Mr Mwakio is not opposed to the application as he has confirmed that indeed the Applicant was convicted and sentenced to serve two (2) years imprisonment each for the offences of house breaking and stealing contrary to **section 304(1)** and **section 268** of the **Penal code** respectively. That the court ordered that the two sentences run consecutively. According to counsel for the Respondents, the offences occurred on the same day and in the course of the said transaction hence the sentences ought to have been ordered to run concurrently.
4. As for the prayer for the court to consider the time the applicant spent in remand during trial, it is the Respondent's counsel's contention that the Applicant was arrested on 24<sup>th</sup> June 2025, charged and arraigned in court on 26<sup>th</sup> June 2025 which was two (2) days later. That the Applicant then pleaded guilty to the charge and was subsequently convicted and sentenced on his own plea of guilty on the same day.
5. The court called for the original record of proceedings in **Murang'a Chief Magistrate's Criminal case No: E451 of 2025** and the same was availed before this court for consideration in the determination of the application for revision.

**DETERMINATION:**

6. In considering the undated Notice of Motion application, I have carefully read through the grounds set out on its face and affidavit sworn by the Applicant in support thereof and

listened to the Defendant's counsel in response thereto. I find the issues for determination being:

- a) **Whether the court has jurisdiction to hear and determine this application.**
  - b) **Whether the sentence meted against the applicant ought to be reviewed form running consecutively to running concurrently.**
  - c) **Whether the court should involve section 333(2) of the Criminal Procedure Code and consider the time the Applicant spent in remand during his trial.**
7. The revisionary power of the High Court is derived from **Article 165(b) and (7)** of the **Constitution** which provides for the supervisory jurisdiction as follows:

***“(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.”***

8. In Criminal trial, the revisionary jurisdiction is provided for under **Section 362 and 364, both of the Criminal Procedure Code, Section 362** provides that:

*“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.”*

**Section 364** goes on to state:

*(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) in proceedings under section 203 or 296(2) of the Panel Code, the Prevention of Terrorism Act, the Narcotic Drugs and Psychotropic Substances (Control) Act, the Prevention of Organized Crimes Act, the Proceeds of Crime*

***and Anti-Money Laundering Act, the Sexual Offences Act and the Counter-Trafficking in Persons Act, where the subordinate court has granted bail to an accused person, and the Director of Public Prosecution has indicated his intention to apply for review of the order of the court, the order of the subordinate court may be stayed for a period not exceeding fourteen days pending the filing of the application for review.***

***(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.***

9. In the instant case, the Applicant has called for a review of the terms of sentence which was upheld against him. Pursuant to the provision under **Article 50(2) of the Constitution:**

***“Every accused person has the right to a fair trial, which includes the right: the benefit of the least sense of the prescribed provision for an offence”***

10. Clearly a reading of this provision confirms that amongst the orders which would ordinarily call for the court to exercise its revisionary jurisdiction.
11. In the instance case, the Applicant was charged with the offence of house breaking contrary to **Section 304(1) and stealing contrary to Section 268** both of the Penal code on 26<sup>th</sup> June 2025.

The facts were that:

*“On 19<sup>th</sup> day of June,2025 at Ileri village, Kahuti Sub-County within Murang’a County, the applicant broke and entered the building used as dwelling house by ROSE WAIHUNYU WANGECHI and stole a woofer make ICONIX,*

*two mobile phones make ITEX and TECHNO SPARK 5, two six kgs gas cylinder all valued at Kshs 37,500/=. The Property of ROSE WAIHUNYU WANGECHI.”*

12. The accused person pleaded guilty to the said offences whereby he was convicted in his own plea of guilt and sentenced to serve two years imprisonment for each limb which sentences the trial court ordered they run consecutively. As a result of this, the Applicant is currently serving a four (4) years imprisonment for the said offence, which he finds in excessive and against the provision of **Section 14 of the Criminal Procedure Code. Section 14** provides that:-

***14. Sentences in cases of conviction of several offences at one trial (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. (2) In the case of consecutive sentences, it shall not be necessary for the court, by reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent to impose on conviction of a single offence, to send the***

***offender for trial before a higher court. (3) Except in cases to which section 7(1) applies, nothing in this section shall authorize a subordinate court to pass, on any person at one trial, consecutive sentences— (a) of imprisonment which amount in the aggregate to more than fourteen years, or twice the amount of imprisonment which the court, in the exercise of its ordinary jurisdiction, is competent to impose, whichever is the less; or (b) of fines which amount in the aggregate to more than twice the amount which the court is so competent to impose. (4) For the purposes of appeal, the aggregate of consecutive sentences imposed under this section in case of convictions for several offences at one trial shall be deemed to be a single sentence.”***

13. From this provision, it is in the preserve of the trial court to pronounce whether sentences should run consecutively or concurrently. This is also reiterated by the **Judiciary Sentencing Policy Guidelines, 2023** as follows:

‘2 3.21

***“Notwithstanding the provision under the Criminal Procedure Code and the Penal Code surended in paragraph 2.3.4 above, the discretion to revise concurrent or consecutive sentences lies with the court. There are two elements to the concept of totality, and these apply as such terms of imprisonment as they do concurrently service and files’***

14. In sentencing the applicant in this case, the court directed that:

*' I do sentence the accused as follows:*

*In the first count, the accused to serve two(2) years imprisonment.*

*In the second count, the accused to serve another two(2) years imprisonment.*

*Sentences to run consecutively and ROA is 14 days.*

15. It is appreciated time the law gives the trial court discretion to order for sentences to run either concurrently or consecutively as it deems fit. However, it is proper and standard practice in Kenya for the court to order sentences to run concurrently where it finds that a series of offences were committed at the same time in a single act or transaction. It is referred to as 'same transaction rule' now an established legal principle in Kenya and clarified under **Section 2.3.21** and **7.13** of the **Judiciary Sentencing policy Guidelines**. **Section 2.3.21** provides that while sentences for offences. **Section 7.13 states:**

*"Where offences emanate from a single jurisdiction, sentences should run concurrently"*

16. What this means is that the accused should serve the sentences simultaneously and not one after the other.

17. In this case, the offence of housebreaking and the subsequent stealing occurred in the course of the same incident and or transaction. Therefore, the sentences of two (2) years imprisonment for each count as ordered by

trial court, would amount to four (4) years imprisonment which is manifestly excessive and inappropriate, hence the need for this court to involve its revisionary jurisdiction and interfere with it.

18. As for the issue of taking into consideration the time served in custody during trial when passing sentence against the accused, **Section 333 (2) of the Criminal Procedure Code** provides that:

***“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”***

19. It is worth noting that the applicant in this case was convicted on his own plea of guilt and sentenced to serve a sentence with the same day, the 26<sup>th</sup> June, 2025, having been arrested on 24<sup>th</sup> June, 2025, clearly the period applicant stayed in custody for two days, two days was before he was arraigned before court to face the charge against him.

20. **Section 333(2) of the Criminal Procedure Code** states:

***“Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”***

21. A reading of this provision states that a sentence ought to start running from the date the court pronounces it. However, the proviso requires that the court takes into account any period any offender spent in custody before the sentence or during trial in calculating the imprisonment terms.
22. In this case, it is quite evident that the applicant pleaded guilty whereby he was convicted on his own plea of guilty and sentenced to serve imprisonment on the same day, 26<sup>th</sup> June, 2025. Therefore, the question of taking into account the period he stayed in custody during trial does not arise in the circumstances of the case, hence the prayer in this regard fails.
23. In the ultimate, the undated Notice of Motion application partially succeeds. Accordingly, the following orders are issued:
  - a) *The trial court's order issued on 26<sup>th</sup> June, 2025 that the sentences imposed against the applicant to run consecutively is hereby set aside.*

*b) The said order is hereby substituted with an order that sentences imposed against the applicant on 26<sup>th</sup> June,2025 by the trial court shall run concurrently pursuant to the provision of **Section 14 of the Criminal Code.***

*c) The prayer made in pursuant of **Section 333(2) of the Criminal Procedure code** is hereby dismissed.*

24. Orders accordingly.

25.

**DATED, SIGNED AND DELIVERED THIS 16<sup>TH</sup> DAY OF APRIL, 2026.**

**HON. D. CHEPKWONY  
JUDGE**