



**Kiana v Republic (Criminal Revision Application E221 of 2025)
[2026] KEHC 6118 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6118 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT EMBU
CRIMINAL REVISION APPLICATION E221 OF 2025**

RM MWONGO, J

MAY 6, 2026

BETWEEN

NICHOLUS MAWIRA KIANA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with 3 counts being breaking into a building and committing a felony contrary to section 306(a) of the Penal Code (1st count), stealing contrary to section 268 as read with section 275 of the Penal Code (2nd count) and malicious damage to property contrary to section 339(1) (b) of the Penal Code (3rd count). He pleaded guilty to all the charges and he was convicted on his own guilty plea. On the 1st count, he was sentenced to 7 years imprisonment; for the 2nd count, he was sentenced to 3 years imprisonment; and for the 3rd count, he was sentenced to 3 years imprisonment. There was no indication as to whether the sentences were concurrent or consecutive.

The Application

2. Through a revision application, the applicant is seeking that the court considers substituting the sentences imposed with fines, that the court orders that the sentences run concurrently or that the court substitutes his custodial sentence with a non-custodial sentence in compliance with sections 4(2), 5 and 6 of the *Probation of Offenders Act*. He stated that he was a first offender and a student. He states that he is now remorseful for his actions; and that he has changed during his incarceration hence the court should consider reviewing the sentences imposed.

Response

3. The respondent did not file any response to the application but it filed its written submissions.



Parties' Submissions

4. In his submissions, the applicant argued that the 3 offences occurred within the same transaction. On that basis, he urges that the court should order that the sentences run concurrently. He argued that the sentences imposed go against the sentencing principles that ought to be applied. He urged the court to consider his rights under Article 50(2) of *the Constitution* and subject him to the least severe sentence applicable.
5. The respondent submitted that the High Court's revisionary jurisdiction is provided for under sections 362-366 of the Criminal Procedure Code. It argued the sentences meted out are found in law and the trial court properly applied them. It relied on the case of Shadrack Kipkoech Kogo v Republic, Eldoret Crim. Appeal No.253 of 2003. It argued that on the day when the accused was sentenced, he had been sentenced in a different case hence he was a repeat offender at that point. The trial court considered this, as well as mitigating factors before meting out the sentences.

Issues for determination

6. The issues for determination are the following:
 1. Whether it should be ordered that the sentences run concurrently; 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

7. The revisionary power of the High Court is drawn from Article 167(6)&(7) of *the Constitution* which provide 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. 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.”
9. In this case, the applicant was sentenced to 7 years imprisonment on the 1st count and 3 years imprisonment on each of the 2nd and 3rd counts. He is seeking that the sentences run concurrently or that they be revised to non-custodial sentences. As earlier noted, during sentencing, the trial court did not state whether the sentences imposed would run concurrently or consecutively. That notwithstanding, the trial court reserved the right to order that the sentences should run concurrently or consecutively.



10. Generally, 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.” [Emphasis added]

11. The pronouncement on how sentences should run also depends on the circumstances under which the multiple offences were committed, for instance where multiple offences occur from the same transaction. 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 follows:

“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.”

12. Looking at the charge sheet in this case, the offences were committed within the same transaction, against the same complainant. 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. The Court was guided by the Judiciary Sentencing Policy Guidelines. 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”.

13. Even though the decision to order consecutive sentences remains in the discretion of the trial court (and in this case the trial court did not pronounce itself on the matter), 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.



14. 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.”

15. According to this provision, the factors for consideration are to be taken into account in the sentencing trial court after conviction but before an offender is sentenced. In this case, the applicant had already been sentenced and he is in the process of serving the imprisonment terms. Therefore, a probation order cannot be made at this stage, and the provision cited does not apply.

Disposition

16. In light of the foregoing discussion, the application partially succeeds to the effect that an order is hereby issued that the sentences imposed by the trial court are lawful but they should run concurrently.

17. Orders accordingly.

DELIVERED, DATED AND SIGNED AT EMBU HIGH COURT THIS 6TH DAY OF MAY, 2026.

.....

R. MWONGO

JUDGE

Delivered in the presence of:

Applicant Present in Court

Ms. Mwaniki for the Respondent

Francis Munyao - Court Assistant

