



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CRIMINAL REVISION NO. E001 OF 2026

**FREDRICK SENI
LENGIMAAPPLICANT**

VERSUS

**REPUBLIC
.....RESPONDENT**

RULING

1. The Applicant herein seeks for a review of sentence. He has premised his Application on the provision of **Section 14, 362, and 364 of the Criminal Procedure Code and Article 165 3 (a) (b) and (7) of the Constitution**. He states that the offences he was charged with arose from the same transaction yet the sentences imposed were ordered to run consecutively
2. He argues that, pursuant to the provisions of **Section 14 of the Criminal Procedure Code** and Paragraph **2.3.21 to 2.3.30** of the **Judiciary Sentencing Polices Guidelines**, the sentences should run concurrently. He prays that the Court varies the sentence in that regard.
3. The Respondent did not respond to the Application.
Determination

4. The Applicant was charged with two counts. On the 1st Count he was charged with the offence of smuggling Contrary to **Section 53 (1) (p) as read with Section 53 (2) of the Kenyan Citizenship and Immigration Act No. 12 of 2011.** On the 2nd count he was charged with harbouring a person who is unlawfully present in Kenya contrary to section 53(1) (d) as read with section 53(2) of the same Act.
5. He was convicted on both counts and sentenced to pay a fine of Ksh. 200,000 or serve a prison term of 2 years, in default, on each count. The sentences were ordered to run consecutively.
6. The Applicant 's argument is that the sentences ought to have ran concurrently.
7. Section 37 of the penal code provides as follows:-
“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, there than a Sentence of death, which is passed upon him under the subsequent Conviction shall be extended 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 a payment of a fine shall be executed concurrently with a former sentence under sub- paragraph (i) of paragraph (c) of sub-section (1) of section 28 or any part thereof”
8. The record clearly show that though the offences were committed in the same transaction, the prison

term of 2 years each was imposed in default of a fine that was imposed on each count. In such a case the sentence cannot be served concurrently because they act as distinct punishments for failing to pay the fine. They must therefore be served independently. That is the import of the above proviso to section 37 of the penal code.

9. In view of the foregoing the Application lacks merit. It is hereby dismissed.

Dated, Signed and delivered at Isiolo, this 7th day of May, 2026

S. Chirchir
Judge.

In the presence of:-
Roba katelo-Court Assistant