



REPUBLIC OF KENYA



KENYA LAW
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**Simiyu v Republic (Criminal Revision E320 of 2024)
[2025] KEHC 5159 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5159 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E320 OF 2024
RN NYAKUNDI, J
APRIL 29, 2025**

BETWEEN

KEVIN SIMIYU APPLICANT

AND

REPUBLIC RESPONDENT

*(Application for revision of sentence arising from the Judgement and Sentence passed
in Eldoret CM's Court Criminal Case No. E1243 of 2024 by Hon. C. KESSE-PM)*

RULING

1. What is pending before me for determination is an undated Notice of Motion Application where the Applicant is seeking the following orders:
 - a. Spent
 - b. That may the court be pleased to invoke the provisions of section 14(1) of the CPC and order the sentences to run concurrently with an option of a fine in each count for the interest of justice considering the mitigating circumstances of the case.
 - c. Any other further order that the court finds fit, appropriate and just to make.
2. The Application is supported by the annexed affidavit sworn by Kevin Simiyu, the Applicant herein where he avers as follows:
 - a. That I was charged, convicted and sentenced to serve 1-year imprisonment in each four counts: Count I assaulting a police officer contrary to section 103(9) of the NPS Act 2011; Count II creating disturbance contrary to section 95(1) of the CPC; Count III malicious damage to property contrary to section 339 of the CPC and count IV willfully resisting arrest contrary to section 103(1) of the NPS Act 2011.



- b. That I was convicted as a first offender thus entitled to benefit from article 50(2)(p)(q).
- c. That I do not have any pending appeal in court thus this application herein for sentence only.
- d. That, the alleged offences emanated from a single transaction thus beg the indulgence of the court to order the sentences run concurrently with an option of a fine in each count for the interest of justice.
- e. That the Respondent suffers no prejudice if the prayers sought herein are granted.
- f. That I am remorseful first offender regretful of my actions thus beg for the sympathy of the court to grant the prayers sought.
- g. That I am a pauper who cannot afford any cost for the preparation of this application thus pray that the costs be waived.

Analysis and Determination

3. I have read and considered the application and there is only one issue manifest for determination i.e. whether this application is merited.

Whether the Application is merited

4. The above case calls for a review of the legal framework governing the order of the sentences to run concurrently. Section 14 of the *Criminal Procedure Code* provides as follows: -
 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 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.
5. In *Peter Mbugua Kabui v Republic* [2016] eKLR the Court of Appeal stated 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.
6. In *Sawedi Mukasa s/o Abdulla Aligwaisa* [1946] 13 EACA 97, 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 Sentencing Policy Guidelines provide as follows: -
 - “7. 13 – Where the offence emanates 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 sentences should run consecutively”.



7. The Court of Appeal has defined the phrase ‘same transaction rule’ in the case of *Republic v Saidi Nsabuga S/O Juma & Another* [1941] EACA and revisited it again in *Nathan v Republic* [1965] EA 777 where the court stated as follows: -

“If a series of acts are so connected together by proximity of time, criminality or criminal intent, continuity of action and purpose, or by relation of cause and effect as to constitute one transaction, then the offences constituted by these series of acts are committed in the course of the same transaction.”

8. In scholarly text on principles of sentencing D.A. Thomas (Haremann 2Nd Edition [1979] pg 53 articulated the rationale of one transaction rule as follows:

“The essence of one – transaction rule appears to be that consecutive sentences are in appropriate when all the offences taken together constitute a single invasion of the same legally protected interest. The principle applies where two or more offences arise from the same facts..... but the fact that the two offences are connected simultaneously or close together in time does not necessarily mean that they amount to a single transaction.”

9. That Applicant herein was charged, convicted and sentenced to serve 1-year imprisonment in each four counts: Count I assaulting a police officer contrary to section 103(9) of the *NPS Act* 2011; Count II creating disturbance contrary to section 95(1) of the *CPC*; Count III malicious damage to property contrary to section 339 of the *CPC* and count IV willfully resisting arrest contrary to section 103(1) of the *NPS Act* 2011. The same offences were committed on 3rd June 2024.

10. In the instant case, the charges in count I, II, III and IV indicate that the offences therein were committed at the same time or date and at almost the same place and were all in the same transaction. The same were connected together in proximity of time and the criminal intent. As such, considering the above against the principles to be considered in meting out consecutive or concurrent sentences, it is my considered view that in the circumstances, the trial court erred in making an order of consecutive sentences.

11. What is problematic with the sentencing Judgment of the learned trial Magistrate is the order of consecutive operation of the sentences which does not comply with the sentencing principles and the sentencing policy guidelines of the Judiciary 2023 which has the overall negative impact of condemning the Applicant to serve a manifestly excessive sentence. The general principle of law under our penal system is that sentences should only run consecutively where the offences are committed separately. However, if the sentences are committed in the same transactions or a series of transactions and within a short period of time, the trial court should order the sentences to run concurrently. Similarly, a court will be entitled to order the sentences to run concurrently when it is clear if they are ordered to run consecutively, they will result in an extra ordinarily excessive sentences.

12. On the matter at hand, this court agrees with the Applicant that there is no sufficient justification for making the order for the consecutive operation of the sentences. In view of the above observations, pursuant to section 362 of the *Criminal Procedure Code*, the order on consecutive sentences stands reviewed and substituted with an order for concurrent sentences.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 29TH APRIL 2025

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R. NYAKUNDI



JUDGE

