



**Njeri v Republic (Criminal Appeal E009 of 2024)
[2025] KEHC 6954 (KLR) (29 May 2025) (Judgment)**

Neutral citation: [2025] KEHC 6954 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL APPEAL E009 OF 2024**

**TW OUYA, J
MAY 29, 2025**

BETWEEN

KENNETH KAMITA NJERI APPELLANT

AND

REPUBLIC RESPONDENT

(Appeal arising out of the sentence of Hon. W. Ngumi, (Senior Principal Magistrate) in Gatundu Chief Magistrate's Court Criminal Case No. E835 of 2022 delivered on 17th December, 2023)

JUDGMENT

Background

1. Kenneth Kamaita Njeri, the appellant herein, was charged with the offence of Maim contrary to Section 231 (a) of the *Penal Code*. The particulars of the offence were that on the 5th day of November 2022 at around 1830 hours along Muhang'ara Rural Road of Kiamwangi Location in Gatundu south Subcounty within Kiambu County unlawfully wounded and maimed Isaac Kimiti Muhia.
2. He faced a second count of Assault contrary to Section 251 of the *Penal Code*. The particulars of the offence were that on the 5th day of November 2022 at about 1830 hours along Muhang'ara rural road of Kiamwangi location in Gatundu south Subcounty within Kiambu County wilfully and unlawfully assaulted James Chege Njeri thereby occasioning him actual bodily harm.
3. The Appellant also faced a third count where he was charged with the offence of Assault contrary to Section 251 of the *Penal Code*. The particulars of the offence were that on the 5th day of November 2022 at about 1830 hours along Muhang'ara rural road of Kiamwangi location in Gatundu south Subcounty within Kiambu County wilfully and unlawfully assaulted George Gacheru Kamau thereby occasioning him actual bodily harm.



4. The Appellant pleaded not guilty to all the counts and the case proceeded to full trial. At the end of the trial, he was convicted of the lesser charge of assault in count one, and convicted on both counts two and three. Accordingly, he was sentenced to three years imprisonment on each count to run consecutively, thus a total of nine years imprisonment.

The Appeal

5. Aggrieved with the sentence, the Appellant lodged the instant appeal. He impugned the sentence arguing that it was harsh, excessive and ought to run concurrently.
6. The appeal was disposed by way of written submissions. The Appellant relied on the grounds set out in his Petition of appeal dated 1st March 2024 and his undated affidavit.
7. The Respondent on its part relied on its written submissions dated 29th November 2024 arguing that the sentence meted against the Appellant by the trial court was both legal and appropriate. The state urged that the appeal be dismissed.

Analysis

8. The Appellant has limited his appeal to an appeal against the sentence. The Court in *Wanjema v Republic* (1971) EA 493 laid down the general principles upon which the first appellate Court may act on when dealing with an appeal on sentence:

“An appellate Court can only interfere with the sentence imposed by the trial Court if it is satisfied that in arriving at the sentence the trial Court did not consider a relevant fact or that it considered an irrelevant factor or that in all the circumstances of the case, the sentence is harsh and excessive. However, the appellate Court must not lose sight of the fact that in sentencing, the trial Court exercised discretion and if the discretion is exercised judicially and not capriciously, the appellate Court should be slow to interfere with that discretion.”

9. The record demonstrates that the trial court gave careful consideration before meting the sentence against the Appellant. The court considered several parameters including the nature of the offence, the mitigation as well as the fact that he was a first offender. Of importance is the fact that the trial court noted that the offences, though similar, were not committed in the same transaction.
10. It is trite that sentencing is a crucial part of a criminal trial process. Though discretionary, the court ought to be guided by a raft of considerations while exercising sentencing discretion. It is noteworthy that such considerations have been discussed at length in the sentencing guidelines promulgated by the Chief Justice and in case law including the Supreme Court in *Petition No. 15 of 2015 Francis Karioko Muruatetu & another v Republic* [2017] eKLR.
11. Section 251 of the *Penal Code* provides that any person who commits an assault occasioning actual bodily harm is guilty of a misdemeanour and is liable to imprisonment for five years. The Appellant was sentenced to three years, on all counts.
12. There is no specific formula of attaining an appropriate sentence. I have considered the nature, the manner of commission of the offence, the principles of sentencing and the amount of sentence imposed. The offence was characterized by serious bodily injuries. The weapon used was dangerous and the injuries were inflicted inter alia on the head, which is a sensitive area as shown in the medical notes of the victims. The sentence was legal and appropriate to the offence. I find no reason to interfere with the sentence imposed by the learned Magistrate.



13. On the submission that the sentences ought to run concurrently, the law on the subject is covered by both the *Penal Code* and the *Criminal Procedure Code*. Sections 12 and 14 of the *Criminal Procedure Code*, Cap. 75 of the Laws of Kenya and Section 37 of the *Penal Code*, Cap. 63 of the Laws of Kenya provide for instances where sentences may run consecutively and concurrently.

14. Sections 12 and 14 of the *Criminal Procedure Code* provides as follows: -

12. Any Court may pass a lawful sentence combining any of the sentences which it is authorized by law to pass.

14. Subject to subsection (3), when a person is convicted over 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 punishments shall run concurrently.

(1) In the case of consecutive sentences, it shall not be necessary for the Court, by the reason only of the aggregate punishment for the several offences being in excess of the punishment which it is competent impose on conviction of a single offence, to send the offender for trial before a High Court.

(2) Except in case 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.

(3) 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.

15. Section 37 of the *Penal Code* provides as follows: -

37. Sentences when cumulative:

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, other than a sentence of death, which is passed upon him under the subsequent conviction shall be executed 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 payment of a fine shall be executed concurrently



with a former sentence under subparagraph (i) of paragraph (c) of subsection (1) of section 28 or of any part thereof.

16. The issue of consecutive and concurrent sentences has been the subject of judicial consideration in several cases. The Court of Appeal in *B.M.N. v Republic* Criminal Appeal No. 97 of 2013 [2014] eKLR pronounced itself as follows:

“(15) 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.”

17. The question on what amounts to same transaction has also been the subject of judicial interpretation. The Court of Appeal in *William Kimani Ndichu v Republic* [2015] eKLR, the Court of Appeal referred to *Rex v Saidi Nsubuga s/o Juma and Another* (1941) 8 EACA 81 and to *Nathani v R* (1965) EA 777, where the meaning of the phrase “same transaction” was defined 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 the 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.”

18. In the instant matter, though the complainants were all assaulted on 5th November 2022 the matter cannot be said to be part of the same transaction as the acts of assault were unrelated and the victims had nothing in common to the Appellant.

19. The Appellant’s plea that the sentences do run concurrently is thus untenable in the circumstances of the case. The Appellant was appropriately sentenced.

Determination

20. In light of the foregoing, the appeal against the sentence fails, and the following orders thus issue:

- a. The sentence by the trial court is upheld
- b. The appeal is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY ON 29TH MAY, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....In person (Kenneth Kamita Njeri)

For Respondent.....Ms Torosi

Court Assistant.....Doreen

