



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwangi v Republic (Criminal Revision E330 of 2024)  
[2025] KEHC 9110 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9110 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E330 OF 2024  
CW GITHUA, J  
JUNE 25, 2025**

**BETWEEN**

**JOHN MAINA MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, John Maina Mwangi was convicted on his own plea of guilty in two counts in which he was charged with two different offences.  
  
In count 1, he was convicted of the offence of stealing Contrary to Section 268 (1) as read with Section 275 of the *Penal Code*.
2. The particulars were that on 21<sup>st</sup> day of June 2023, at Gakira Sub-Location, Kangema Sub-county within Murang'a County, he stole one metal grill, one window, one hand washing basin, one manhole lid, five aluminium rods, ten filler taps and two flexi tubes all valued at Kshs.45,000, the property of Kenya Medical Training College.
2. In Count 2, he was convicted of the offence of malicious damage to property contrary to Section 339 (1) of the *Penal Code*, particulars being that on the same date and place, the applicant wilfully and unlawfully damaged one metal grill, one window, one handwashing basin, one manhole lid, 5 aluminium rods, ten filler taps and two flexi tubes valued at Kshs.45,000, the property of Kenya Medical Training College.
3. Upon his conviction, he was sentenced to serve two years imprisonment in Count 1 and three years imprisonment in Count 2. The terms of imprisonment were ordered to run consecutively.
4. In his application vide a letter dated 29<sup>th</sup> October 2024, the applicant sought revision of his sentence faulting the learned trial magistrate for ordering that the sentences meted out in the above two counts



should run consecutively yet they related to offences which had been committed in the course of the same transaction.

5. In addition, the applicant urged me to note that he was a first offender aged 25 years and that he was remorseful for the offences he had committed. He implored me to set aside the trial court's order and substitute it with an order directing that the sentences imposed in each count should run concurrently.
5. During the hearing, the applicant re-iterated that his only concern was the trial court's order that the sentences meted out on him should run consecutively instead of concurrently.
6. The application was contested by the respondent through learned prosecution counsel, Ms. Muriu. Counsel supported the trial court's decision on sentence including the impugned order arguing that the order was meant to serve as a deterrent measure given prevalence of the offences the applicant had committed.
7. This being an application for sentence review, it invokes this court's revisional jurisdiction donated under Section 362 of the *Criminal Procedure Code* (CPC) which empowers this court to call for and examine the record of the lower court in criminal proceedings, to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order or regularity of proceedings before the trial court.
8. It is trite that sentencing is at the discretion of the trial court but the High Court when exercising its supervisory jurisdiction, which includes revisional jurisdiction can intervene and disturb the sentence if it was satisfied that the sentence was illegal or that in passing it, the trial court applied wrong legal principles or took into account extraneous factors or failed to consider relevant ones.

See: *Bernard Gacheru v Republic* [2002] eKLR; *Kenneth Kimani Kamunyu v Republic* [2006] eKLR

9. It is clear that in the instant application, the applicant was not challenging legality of the sentences imposed by the trial court per se but was only aggrieved by the courts direction that the sentences should run consecutively.
10. Section 14 (1) of the *Criminal Procedure Code* (CPC) provides for circumstances in which a court can direct sentences to run either consecutively or concurrently. It stipulates as follows;

“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.”

11. The court of Appeal when faced with a complaint similar to the one raised by the applicant in this application had occasion to interpret Section 14 (1) above in *Peter Mbugua Kabui v Republic* [2016] eKLR and expressed itself 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. In this case, a reading of the charge sheet and the trial court's record clearly reveals that the offences subject of the applicant's conviction and sentence were committed at the same time against the same complainant. There is no doubt that they were offences committed in the course of the same transaction.
13. Under Section 14 (1) of the CPC as interpreted by the Court of Appeal in the Peter Mbugua Kabui case [ *supra* ], where an accused was convicted in one trial of a series of offences which were committed at different times in different criminal transactions, the trial court had discretion to order that the sentences imposed in each count shall run either consecutively or concurrently but if the offences had been committed in the course of the same transaction, the trial court was enjoined to order that the sentences should run concurrently. This is so because it would be unjust to order that such sentences should run consecutively as this would translate to punishing an accused person twice for the same criminal act.
13. In this case, as stated earlier, the sentences were imposed for offences which had been committed in the course of the same transaction and the trial court ought to have ordered that the sentences shall run concurrently. Instead, the trial court misapplied the above legal principle and ordered that the sentences should run consecutively.
13. In view of the foregoing, I find merit in the instant application and it is hereby allowed. The order made by the trial court is hereby set aside. It is substituted with an order directing that the sentences meted out against the applicant shall run concurrently from the date they were imposed by the trial court.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT MURANGA THIS 25<sup>TH</sup> JUNE, 2025.**

**HON. C. W. GITHUA**

**JUDGE**

In the presence of :

The Applicant

Ms. Susan Waiganjo, Court Assistant

No appearance for the respondent.

