



**Mwangi v Republic (Miscellaneous Criminal Application
E013 of 2025) [2025] KEHC 11129 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11129 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2025**

PN GICHOHI, J

JULY 29, 2025

BETWEEN

NAHASHON KIMANI MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Vide a Notice of Motion dated 24th January 2025, the Applicant has moved this Court under Section 333 of the Criminal Procedure Code seeking orders that his sentences in Chief Magistrate’s Court Criminal Case E150 of 2025 run concurrently.
2. In his supporting Affidavit, he stated that he was convicted and sentenced to serve 42 months in four counts of stealing of stealing contrary to section 268 as read with 275 of the Penal Code in Criminal Case E150 of 2025 .
3. He stated that the Court has jurisdiction under Article 165 (3) (9) of the Constitution.
4. That application is opposed by the Respondent on the grounds that the offences the Applicant was charged with occurred on diverse date as follows:-Count 1- on 17th January ,2025Count 2- on 7th January 2025Count 3 – on 10th January 2025Count 4- on 11th January 2025
5. He states that upon pleading guilty to all the counts, the Applicant was convicted and treated as a first offender and that during his mitigation , the Applicant asked to be allowed time to settle the value of the stolen timber. However, the trial court declined for reasons that the Applicant had earlier promised to pay the owners of the timber but failed to do so. He was therefore sentenced to a fine and in default, a term imprisonment on each of the four counts. However, the trial court did not indicate whether the sentences were run concurrently or consecutively, hence causing an irregularity in the proceedings.



6. Referring to Paragraph 7 of the Sentencing Guidelines, the Respondent stated that the prayer for the sentences run concurrently cannot hold for reasons that the offences occurred during multiple transactions and involved multiple victims, hence the sentences should be consecutive.
7. He therefore urged the Court to correct the error on record.

Determination

8. The lower court file has been availed and indeed, the accused/Applicant herein was charged with four (4) different counts of theft contrary to Section 268 as read with Section 275 of the *Penal Code*.
9. Those offences were under the same section of the *Penal Code*, they were committed on different dates against different complainants and the value of the goods stolen was also different.
10. In these circumstances, the sentence ought to run consecutively. The prayer for sentences to run concurrently cannot hold.
11. The omission by the trial court to indicate how the sentences should run is therefore an irregularity and illegality warranting intervention by this Court under Section 362 of the *Criminal Procedure Code* which specifically, provides that:-

“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.”

12. This Court therefore has jurisdiction to correct that manifest irregularity.
13. Further, Section 364 of the *Criminal Procedure Code* provides as follows:-

- “(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
 - (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
 - (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence: Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
- (3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.
- (4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.



(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

14. In those circumstances, this Court upholds the conviction and sentence but revised to read that the sentences on each of the four counts will run consecutively.
15. Further, it is noted that the Accused/Applicant was arrested on 9th November 2024 and arraigned in Court on 12th November 2024. His plea was taken on 17th January 2025 and he pleaded guilty and was sentenced.
16. Section 333 (2) of the *Criminal Procedure Code* is couched in mandatory terms. The period spent in custody has be put into consideration when sentencing but the trial court did not comply.
17. In conclusion therefore:-
 1. The sentences on the four (4) counts will run consecutively.
 2. The sentences to run from the date of arrest being 9th November 2024.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 29TH DAY OF JULY, 2025.

PATRICIA GICHOHI

JUDGE

In the presence of:

Nahashon Kimani Mwangi - Applicant

Mr. Kihara for the Respondent

Ruto, Court Assistant

