



**Njoroge & another v Republic (Criminal Appeal E003 of 2024)  
[2025] KEHC 11822 (KLR) (6 August 2025) (Judgment)**

Neutral citation: [2025] KEHC 11822 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL APPEAL E003 OF 2024  
HI ONG'UDI, J  
AUGUST 6, 2025**

**BETWEEN**

**MOSES GITHUA NJOROGE ..... 1<sup>ST</sup> APPELLANT**

**SAMUEL WANGO KARIUKI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the Judgment delivered by Hon. Eunice Kelly Aomo  
SPM in Naivasha CMCR Case No. 818 of 2018 on 6<sup>th</sup> March, 2024)*

**JUDGMENT**

1. Moses Githua Njoroge and Samuel Wango Kariuki hereinafter referred to as 1<sup>st</sup>, and 2<sup>nd</sup> appellants were charged with three (3) counts of robbery with violence contrary to section 295 as read with section 296(2) of the penal code. The said offences were committed on the night of 26<sup>th</sup> and 27<sup>th</sup> day of April, 2018 at Gilgil Weighbridge area along Nairobi – Nakuru highway.
2. They denied the charges and the matter proceeded to full hearing with the prosecution calling seven (7) witnesses. Each appellant gave a sworn statement of defence without calling any witness. Thereafter the trial court delivered its Judgment on 1<sup>st</sup> February, 2024 whereby both appellants were convicted on all the three (3) counts. They were later each sentenced to serve fifteen (15) years on each of the three (3) counts.
3. Being aggrieved by the Judgment they filed this joint appeal on the following ground:
  - i. That the learned trial Magistrate erred in law in ordering the sentences to run consecutively hence failed to comply with the provisions of section 12 and 14 of the Criminal Procedure Code.



4. A summary of the case is that Mbaruk Limo (PW1), his wife Maureen Choge (PW2) and his sister in law (PW3) were travelling from Eldoret to Nairobi on 26<sup>th</sup> April, 2018. They were aboard motor vehicle registration No. KBX xxx Toyota Premio driven by PW1. They left Baraton at 7.00 -7.30pm and were in Gilgil at around 11pm. At the weighbridge PW1 noticed he had a puncture. He pulled off the road to attend to it. While outside, working on the tyre he heard PW2 and PW3 screaming. He turned up to see what it was and he saw five (5) men armed with pangas, knives and clubs, with the ladies.
  5. PW1, PW2 and PW3 were all grabbed and escorted to the bushes. Two of the attackers were left behind changing the tyre of the vehicle. They were robbed of their mobile phones, cash and watch. PW1 was robbed of his Techno phone valued at Ksh 10,000/= Iphone (which he had left in the car valued at Ksh 60,000/=) and cash Ksh 3,000/=. They took away his ATMs for post Bank, Diamond Trust and NHIF and car radio. They demanded for his Mpesa Pin and ATM Pin and transferred from his Mpesa account Ksh 2,500/= and from M-shwari Ksh 10,000/=
  6. PW2 had Ksh 1,600/= in her handbag and on Mpesa Ksh 50/. She was asked to call people to send them money since she did not have money. She was ordered to use Kiswahili language as she asked for money, which she did. Her brother in law her sent her Ksh 10,100/= which the thugs transferred to their phone. She was robbed of her phone make Techno valued at Ksh 12,000/=-, cash Ksh 1,600/- pair of shoes valued at Ksh 1,300/= scarf and gumboots plus the Kshs 10,000/= sent by her brother in law.
  7. PW3 Machore Choge said the thugs demanded for her Mpesa and ATM Pin. They did not take away cash from her Mpesa account. They however withdrew Ksh 20,000/= from her Co-operative Bank Account and Ksh 500/= cash from her handbag. None of the victims was injured.
  8. PW4 Moses Chege Wambugu testified that he works at Dagoretti corner. On 14<sup>th</sup> March, 2018 his colleague Stephen Maina borrowed his car registration No. KAL xxxN to take him to Juja. He later learnt that the motor vehicle had had its rear windscreen damaged, and the radio stolen. When he went home that evening he found the vehicle damaged, radio stolen and his wallet was missing. He later reported the matter to Ruiru police station on 16<sup>th</sup> April, 2018 (PEXB 9 – police abstract). He identified his lost and found ID Card No. xxx S/No xxx. He was arrested on 18<sup>th</sup> April, 2018 from his work place and booked at Gilgil police station. His ID Card had been used to register an Mpesa line. He had a new ID Card No. xxx (EXB 10)
  9. PW5 Daniel Khamisi a law enforcement Liason officer with Safaricom and on request of the police (Cpl Muriuki) he investigated mobile number xxx and Mpesa transactions for the period between 31<sup>st</sup> March, 2018 to 16<sup>th</sup> Mary, 2018. This was in respect of a robbery with violence case. The said number was registered in the names of Moses Chege Wambugu. He generated an Mpesa statement. The notable transactions were:Kshs 12,500/= received from Mobile No. xxxx in the name of Barrack Limo (PW1).At xxx hrs – it received Ksh 300/= from No. xxx– Barrack Limo (PW1)At xxx – It received Ksh 10,000/= from No. xxx – Maureen Choge (PW2)
- There were other transactions but not related to the assignment by Cpl Muriuki. He produced the registration details and Mpesa statement in regard to the account in question as PEXB 1 and 2 respectively.
10. PW6 Eunice Njeri is an Mpesa agent in Gilgil. She said she knew the 1<sup>st</sup> appellant as he visited his sister in the neighbourhood. In March 2018 the 1<sup>st</sup> appellant came to her Mpesa shop to register a line. He identified a line and gave his ID Card. The process was successful. The ID card used was No. xxx S/No. xxx in the name so Moses Chege Wambugu. The number she gave him was xxx. After 2 months she learnt that the number she had registered was involved in crime. She knew the owner after the arrest.



11. In cross examination she said the 1<sup>st</sup> appellant had never withdrawn money from her shop. She insisted that the photo on the ID card to her was that of the 1<sup>st</sup> appellant (PEXB 3). During registration a photo of the applicant is usually taken and sent to Safaricom. Safaricom verified and approved the registration.
12. PW8 No. xxx P. C Nicholas Kiptarus Ng'eno was with Sgt Muriuki (now deceased) and P.C Alibwore Bondo as they conducted the investigations herein. They interviewed the witnesses (PW1 – PW3). He produced the statements referred to by PW5 as PEXB 2 and 7. He further produced bank statements for PW1, PW2 as PEXB 5 & 8; The Mpesa statement for Tel No. xxx was produced as PEXB 13; letters to and from the National Registration Bureau (PEXB 14(a) and (b)).
13. After obtaining this information they went out to look for Moses Chege Wambugu (PW4) in whose name line No xxx was registered. Upon arrest they learnt his vehicle had been broken into and items stolen. A report had been made though late via O. B No. 32/18/4/18 (P EXB 10) and police abstract issued (PEXB 9). A statement was recorded from PW4 at Gilgil police station.
14. It was his further evidence that they had earlier arrested the two appellants and recovered two ID Cards namely: No xxx for Moses Chege Wambugu and No. xxx for Moses Gathua Njoroge. They were recovered from the left side trouser pocket of the 1<sup>st</sup> appellant. PEXB 3 – ID for PW4, PEXB 4 – ID for 1<sup>st</sup> appellant. He explained that PW4's ID card had been used to register the Safaricom line and for transfers from the complainants (PEXB 3 & 9)
15. An inventory (PEXB 15) was prepared and signed by the 1<sup>st</sup> appellant, PW8 and 2 officers. A wrist watch belonging to PW1 had been recovered from the 2<sup>nd</sup> appellant. The watch was produced as P.EXB 1. An inventory was also prepared (PEXB 16). With leave of the court he produced the statement (PEXB17) of the late Sgt Thomas Muriuki Koro.
16. In cross examination he acknowledged that there was a confusion on the dates by PW4 on the damage to his car, report of the incident and recording of the statement. He however clarified that the statement was recorded on 19<sup>th</sup> May, 2018 at 2 pm at Gilgil police station.
17. The 1<sup>st</sup> appellant in his sworn defence stated that he was a driver of lorry registration No. KCB xxxQ. He testified on how he was arrested in Kinangop on 31<sup>st</sup> June, 2018 (sic) for transporting sugar and rice suspected to have been stolen. The goods belonged to one Elizabeth Wanjiku with whom he was. They were returned to Gilgil where they had come from. He denied having been arrested in Salgaa, nor signing any inventory. He further stated that the Mpesa statement showed that money was withdrawn in Ol Kalou on 6<sup>th</sup> (sic). The agent was not called to confirm (EXB D3 & 4). He said the line was registered before the loss of the ID Card. He denied visiting PW6's shop to register the line. He was not identified on an identification parade.
18. In cross examination he said he didn't know where he was on 26<sup>th</sup> and 27<sup>th</sup> April, 2018 as he was a long-distance driver. He denied being found with 2 ID cards. He said he only came to know the 2<sup>nd</sup> appellant at the police station.
19. The 2<sup>nd</sup> appellant in his sworn defence said he was employed in purchasing groceries at the market. He often used a motorcycle. On 1<sup>st</sup> June 2018 he went to the market and returned home at around 6.00am. He prepared for his normal business and got two clients to take to Kimuni. On the way one asked to stop for him to relieve himself. He did and that's when he was asked to alight from the motorcycle and the clients introduced themselves as police officers. He took them to Maina's house, his own house and later he was arrested and handcuffed and placed in a police van. He was not told why he was arrested. His motorbike was ridden up to the police station.



20. It was his evidence that the witnesses never identified him and neither was he arrested in Nakuru. He denied having been arrested with a watch, and neither was he arrested with anything.
21. In cross examination he said he did not know where he was on the date of incident. No photo of him with the phone was taken.
22. The appeal was canvassed by way of written submissions.

### **Appellants' Joint Submissions**

23. The same were filed on 29<sup>th</sup> January, 2025 and are dated 20<sup>th</sup> January, 2025. They submitted that they were charged with more than one offence in the same charge sheet with the same offence and same facts. They therefore argued that the court ought to have ordered that the sentences run concurrently and not consecutively.
24. They referred to section 37 of the penal code and the New Judiciary sentencing guidelines under paragraph 2.3.24 which provides:

“A concurrent sentence will normally be appropriate where the offences arise out of the same incident or facts. Eg. Poaching of several animals that vary in the degree of protection they are afforded under the law: a burglary “spree” of several properties committed in one night, fraud and associated forgeries or a dangerous arriving incident where multiple victims are injured as a result of one offence of dangerous driving e.g arriving into a bustop”.

In defining what “same transaction” means they referred to the Court of Appeal case of Republic V Saidi Nsabuga s/o Juma and another (1941) EACA 81 cited with approval the case of Okello V Republic (1984) eKLR where it explained the “Same Transaction rule” 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 or 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”.

25. They further referred to the Court of Appeal decision in Peter Mbugua Kabui V Republic [2016] eKLR where the said court addressed the issue of concurrent and consecutive sentences and stated as follows

“In the case of Sawedi Mukasa s/o Abdulla Aligwaisa [1946] 13 EACA 97, the then Court of Appeal for Eastern Africa in a judgment read by Sir Joseph Sheridan stated that the practice is where a person commits more than one offence at the same time and in the same transaction, save in very exceptional circumstances, to impose concurrent sentences. That is still good practice. 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”

Also see Naivasha HCC Rev/E010 of 2024 Harun Gitau Mwangi V Republic

26. They thus urged the court to allow the appeal and order the sentences to run concurrently.



## Respondents submissions

27. The Respondent through M/s Carolyne K. Chege prosecution counsel filed grounds of opposition and written submissions both dated 4<sup>th</sup> March, 2025. Counsel while addressing the question as to whether the trial court acted on a wrong principle referred to section 14 of the Criminal Procedure Code which provides thus:

1. Subject to subsection (3), when a person is convicted at one trial or 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 order the court may direct, unless the court directs that the punishments to run concurrently.

28. The sentencing policy guidelines provide as follows:

Where the offences emanate 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. 14 The discretion to impose concurrent or consecutive sentences lies in the court.

7. 15 In the case of imprisonment in default of payment of a fine, the sentence cannot run concurrently with a previous sentence.<sup>50</sup>

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29. Counsel further referred to: Republic V Saidi Nsabugu (supra) as revisited in Nathan V Republic [1965] EA 777 and Peter Mbugua Kabui V Republic [2016] eKLR which she submitted is in consonance with clause 7:13 and 7:14 of the sentencing policy guidelines.
30. She thus argued that though the offences were committed on the same date, almost at the same place, same transaction they involved 3 different complainants. She submitted that, the sentences should run consecutively. That the sentences/meted out are not excessive and no material factor was left out or not considered by the court.

### **Analysis and Determination**

31. This being a first appeal this court is called upon to re-evaluate and assess the evidence and arrive at its own independent conclusion. It has to bear in mind that unlike the trial court it did not have the opportunity to see or hear the witnesses testify and so give an allowance for that.
32. In the case of Gabriele Kamau Njoroge V Republic [1982 – 88] IKAR the Court of Appeal held that:
1. It is the duty of the first appellate court to remember that parties are entitled to demand of the Court of first appeal a decision on both questions of fact and law and the court is required to weigh conflicting evidence and draw its own inferences and conclusions but bearing in mind always that it has neither seen nor heard the witnesses and make due allowance for this.
- Also see: Pandya V Republic {1957} E.A 336; Rawatha V Republic 1957 E.A 570
33. I have carefully considered the record of appeal, grounds of appeal, both parties submissions, cited authorities and the law. The main issues for determination from the grounds of appeal is whether the sentences should run consecutively or concurrently. However, before I get there I find it necessary for this court to satisfy itself as to whether the conviction on the three counts is sound.
34. It is clear from the evidence that none of the three (3) complainants were able to identify the assailants. What led to the arrest of the two appellants was the transfer of money from the complainants Mpesa and Bank accounts to one specific Mpesa line number xxx registered in the name of Moses Chege Wambugu (PW4) I.D No. xxx S/No. xxx (PEXB 3)
35. This line was registered in March 2018 by PW6 who is a Safaricom agent. PW6 identified the 1<sup>st</sup> appellant as the person who had come to the shop for registration of a Safaricom line. The registration was online and she had taken his photo and forwarded it to Safaricom who accepted it and registered the line.
36. PW8 told the court that during the arrest two identity cards were recovered from the 1<sup>st</sup> appellant's left trouser pocket. The said 2 identification cards were PEXB 3 and PEXB 4. PW6 was very certain that the identity card (PEXB 3) which the 1<sup>st</sup> appellant presented to her had his photo in it, and if there was any issue Safaricom would have raised it after she sent them the 2<sup>nd</sup> appellant's photo which she had taken.
37. PW4 confirmed that his documents were stolen when his vehicle had been broken into in March 2018. The registration using PW4's ID Card was confirmed to have been in March 2018. The robbery and transfer of money to the line registered by PW6 in connection to this case was done a month after the



said registration. The Mpesa statements and bank statements corroborate the evidence of the witnesses (PW1 - PW6)

38. What connects the 2<sup>nd</sup> appellant to this offence is his being found in possession of PW1's watch not long after the robbery of 26<sup>th</sup> – 27<sup>th</sup> April, 2018 night. He did not give any explanation but instead denied having been found with the watch. PW1 had a photo he had taken while wearing the watch and this photo was produced as PEXB 1. The 2<sup>nd</sup> appellant does not dispute that. PW8 produced the inventories of whatever was recovered. The 2<sup>nd</sup> appellant signed the inventory with the watch as one of the many recovered items from him on 31<sup>st</sup> May, 2018 at Mzee Wanyama Estate, PEXB 16).
39. The trial court analyzed the evidence very well and arrived at the right conclusion by finding the appellants guilty of the 3 counts of robbery with violence contrary to section 295 as read with section 296(2) of the Penal Code. The appellants are not challenging their convictions.
40. On whether the sentences should run concurrently or consecutively the court has to go back to the charges and the evidence adduced. There is no dispute that the offences herein were committed on the night of 26<sup>th</sup> – 27<sup>th</sup> April, 2018; at the same time; by the same people and same offence. The only difference is the victims who were in the same vehicle. The record shows that PW2 and PW3 who were the ladies were held in one place while PW1 was moved to a different point.
41. In line with the holding in the cited cases above and with my understanding of clauses 2.3.24, 7.13 and 7.14 of the Judiciary Sentencing guidelines the offences herein were committed in the course of the same transaction. Had the State applied for enhancement of sentence that would have been a serious issue for consideration. I will leave it at that since it has not been asked for.
42. The upshot is that the appeal on sentencing has merit and I allow it. The conviction is upheld. The order for the sentences to run consecutively is hereby set aside and substituted with an order for the sentences to run concurrently from the time they were arrested ie. 31<sup>st</sup> May 2018.
43. Orders accordingly

**DELIVERED VIRTUALLY, DATED AND SIGNED THIS 6<sup>TH</sup> DAY OF AUGUST, 2025 IN OPEN COURT AT NAKURU.**

**H. I. ONG'UDI**

**JUDGE**

