



Case Number:	Criminal Appeal 882 of 1975
Date Delivered:	11 Feb 1976
Case Class:	Criminal
Court:	High Court at Nairobi (Milimani Law Courts)
Case Action:	Judgment
Judge:	Edward Trevelyan, Surrender Kumar Sachdeva
Citation:	Ng'ang'a v Republic [1976] eKLR
Advocates:	Mr B Chunga for Respondent
Case Summary:	<p>Ng'ang'a v Republic</p> <p>High Court, at Nairobi February 11, 1976</p> <p>Trevelyan J & Sachdeva Ag J</p> <p>Criminal Appeal No 882 of 1975</p> <p>Sentencing - <i>Concurrent sentences for two offences committed in one criminal transaction - insufficient sentencing powers.</i> The appellant was convicted of housebreaking and theft committed in one criminal transaction. The trial Magistrate awarded consecutive sentences, citing the accused's bad record as a reason for doing so. This appeal was against the sentence, with the appellant contending that they should have run consecutively.</p> <p>Held :</p> <p>1. Concurrent sentences should be awarded for offences committed in one criminal transaction. The fact that the accused had a bad record is no excuse to alter the rule. If the court has insufficient powers to punish it must refer the matter to a higher court as set out in Section 221 of the Criminal Procedure Code.</p>

	<p>2. The two sentences are to run concurrently.</p> <p><i>Appeal against conviction dismissed. Appeal against consecutive sentence allowed.</i></p> <p>Cases</p> <p><i>Katungo Mbuki v Republic</i> [1962] EA 682 (approved and followed)</p> <p>Statutes</p> <p>Criminal Procedure Code (Cap 75) Section 221</p> <p>Advocates</p> <p><i>Mr B Chunga</i> for Respondent</p>
Court Division:	Criminal
History Magistrates:	-
County:	Nairobi
Docket Number:	-
History Docket Number:	-
Case Outcome:	Appeal against conviction Dismissed. Appeal against consecutive sentence Allowed.
History County:	-
Representation By Advocates:	One party or some parties represented
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL APPEAL NO. 882 OF 1975

NG'ANG'A.....APPELLANT

VERSUS

REPUBLIC.....RESPONDENT

JUDGMENT

The Second Class Magistrate convicted the appellant of housebreaking and theft and awarded him consecutive prison sentences for having committed those offences. Concurrent sentences should have been awarded for this one criminal transaction. It is true that the appellant has a bad record but that is beside the point. The case should have been taken before a magistrate of a higher status. In *Katungo Mbuki v Republic* [1962] EA 682 at pages 683 and 684 this court said:

“... if the offence is one in respect of which the prosecution considers the court has insufficient powers of punishment then it is his duty to take steps to bring the offender or have him brought before a court which has adequate powers of punishment.

But, of course, the magistrate should, in view of the appellant's antecedents have committed him for sentence under Section 221 of the Criminal Procedure Code. The appeal against conviction is dismissed. The appeal against sentence succeeds to the extent that the prison sentences will run concurrently.

Dated and Delivered in Nairobi this 11th day of February 1976.

E.TREVELYAN

S.K.SACHDEVA

JUDGE

AG. JUDGE



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