



**Ingosi v Republic (Criminal Miscellaneous Application E053 of 2023)
[2024] KEHC 10406 (KLR) (23 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10406 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E053 OF 2023
RN NYAKUNDI, J
AUGUST 23, 2024**

BETWEEN

FRANCIS INYANJE INGOSI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of robbery with violence contrary to section 295(1) of the Penal Code as read with section 296 (2) of the Penal code in Kapsabet SPM CRC No. 2191 of 2015. After the trial, he was convicted and a death sentence was imposed. The applicant subsequently by way of a petition before this court sought for sentence review, which petition was allowed and the sentence was reviewed to 20 years imprisonment.
2. The applicant has filed the present application pursuant to the provisions of section 333(2) and he urges this court to allow the application in that regard.

Analysis and Determination

3. I have perused the application and the main issue for determination herein is whether the applicant is entitled to review of sentence under Section 333(2) of the Criminal Procedure Code.
4. Section 333(2) provides as follows:
 - (2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.



5. The Judiciary *Sentencing Policy Guidelines* are instructive on this. They require that the court should take into account the time already served in custody if the convicted person had been in custody during the trial. Further, that a failure to do so would impact on the overall period of detention which would result in excessive punishment that in turn would be disproportionate to the offence committed.

6. In the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR the court expressed itself in the following terms: -

“By proviso to section 333(2) of the *Criminal Procedure Code* where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account of the period spent in custody. Ombija J, who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22nd September 2009 he had been in custody for 10 years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”

7. It follows then that the court should indicate in its decision that indeed the time spent by the accused in custody has been considered and that it has factored it in the final sentence. Failure to do so means that the period has not taken into consideration.

8. The punishment prescribed by the law for the offence of robbery with violence is a death sentence. I take note that the applicant was found guilty of the offence. This court took note of the Muruatetu decision, appreciated the various mitigating factors and objectives of sentencing in totality in meting out a determinate sentence of 20 years imprisonment.

9. The court in its sentencing decision stated as follows:

“I think it is only fair that he has a more determinate period pronounced, rather than floating in space without an end in sight, I am therefore inclined to interfere with the sentence and mete a more definite period of 20 years imprisonment, which shall run from the date of sentence by the trial court.”

10. Having perused this court’s decision in sentencing, I am of the considered view that the sentence was reasonable and the provisions of section 333(2) were considered, given the charge in question. I consider the sentence proportionate to the offence and the circumstances thereof. The application is thus dismissed.

DATED SIGNED AND DELIVERED AT ELDORET THIS 23RD DAY OF AUGUST, 2024

In the Presence of

Mr. Mugun for the State

Accused

R. NYAKUNDI

JUDGE

