



**Mbinga v Republic (Criminal Miscellaneous Application E041 of 2024)
[2024] KEHC 11837 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E041 OF 2024
RE ABURILI, J
SEPTEMBER 27, 2024**

BETWEEN

ROBERT OUKO MBINGA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for review of Conviction and Sentence in Siaya CM's Court vide Criminal Case No. E573 of 2021 delivered by Hon. Lester Simiyu, SPM on 25/1/2024)

RULING

1. The Applicant Robert Ouko Mbinga was convicted of the offence of robbery with violence contrary to Section 296(2) of the *Penal Code* vide Siaya SPM Cr Case No. E573/2021. He was sentenced to serve 20 years imprisonment on 25/1/2024.
2. He now applies for sentence review and reduction vide his application dated 28/3/2024. I have considered the application and what he claims to be mitigation alleging that his children being orphaned because their uncle died and wants Section 333 (2) to be applied.
3. I observe that on 24/5/2022, the convict herein was released on bond pending trial. The charge sheet shows that he was arrested on 4/8/2021.
4. The latter is the only ground upon which I can reconsider his plea, noting that Section 333 (2) of the *CPC* provides that the sentence shall take into account the period spent in custody prior to sentencing or being released on bond.
5. I allow the application dated 28/3/2024 to the effect that 20 years imprisonment shall be calculated from date of arrest on 4/8/2021 as per the charge sheet in the lower court and 24/5/2022 when he was released on bond pending trial.
6. This file is closed. I so order.



DATED, SIGNED AND DELIVERED AT SLAYA THIS 27TH DAY OF SEPTEMBER, 2024

R. E. ABURILI

JUDGE

