



**Machanja v Republic (Criminal Petition E004 of 2022)
[2024] KEHC 15246 (KLR) (29 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 15246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E004 OF 2022
AC BETT, J
NOVEMBER 29, 2024**

BETWEEN

OSCAR MAKWA MACHANJA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Oscar Makwa Machanja was convicted of the offence of murder contrary to Section 203 as read with Section 204 in a Judgment delivered on 10th December 2021 by W. Musyoka, J. Subsequently, he was sentenced to serve thirty years in jail by the same Judge.
2. On 25th February 2022 which was the day of sentencing, the Applicant asked the court to take into account the period that he spent in custody in the calculation of the sentence. The Honourable trial Judge declined the Applicant's prayer and stated that he had already considered the time spent by the Applicant in custody before passing the sentence.
3. By a Notice of Motion filed on 25th May 2022, the Applicant made the following application:-
 1. That may this Honourable High Court be pleased to grant me the period I spent in remand of almost seven (7) years be included to the sentence am serving.

The State did not oppose the application which is in effect, an application for revision of sentence.
4. I have considered the application. The records show that on 25th February 2022, the Applicant asked the trial court to consider the period that he spent in custody in the calculation of the sentence. Hon. Musyoka J, noted that in determining the sentence of thirty (30) years, he had considered the time spent by the Applicant in custody.



5. From the record, it is evident that the court considered the period spent in custody and other mitigating factors before it passed the sentence of thirty years. The trial court noted that the maximum penalty for the offence of murder is death. The trial court considered the pre-sentence report as well as the mitigation submitted by the Applicant's Counsel Mr. Munyendo, who fervently pleaded for leniency and prayed for a non-custodial sentence after submitting that the Applicant had spent time in custody. The trial court put all these into consideration in meting out the sentence.
6. It cannot be gainsaid that the court is obligated, by virtue of Section 333 (2) of the *Criminal Procedure code*, to take into account the period spent in custody by an accused person during the imposition of the sentence. This position was well elucidated by CV Odunga J, as he then was in *Vincent Sila Jona & 87 others -vs- Kenya Prison Service & 2 others* [2021] eKLR. See also the Court of Appeal case of *Ahamad Abolfathi Mohammed & Another -vs- Republic* [2018] eKLR.
7. For the Applicant to benefit from a sentence review, he needs to demonstrate that the court failed to adhere to the provisions of Section 333 (2) of the *Criminal Procedure Code*. The Applicant herein has failed to demonstrate so as the records indicate otherwise.
8. The application therefore fails and is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 29TH DAY OF NOVEMBER 2024.

A. C. BETT

JUDGE

In the presence of:-

The Applicant present virtually at Kibos

Ms. Chala for the Respondent

Court Assistant: Polycap

