



REPUBLIC OF KENYA



**KENYA LAW**

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Majanga v Republic (Criminal Revision E424 of 2021)  
[2023] KEHC 179 (KLR) (Crim) (24 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 179 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL REVISION E424 OF 2021**

**DO OGEMBO, J  
JANUARY 24, 2023**

**BETWEEN**

**CRISPIN OMONDI MAJANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Crispin Omondi Majanga, the applicant has moved this court by way of a Notice of Motion application dated December 28, 2021. The application is brought under section 362 and 364 of the [Penal Code](#) and seeks that the period he was in remand custody be considered in the sentence i.e from February 2018 to June 2019. He otherwise has prayed for an alternative sentence of a non-custodial sentence. In the affidavit in support of the application, he has deponed that he was in custody from September 20, 2016 for 4 months and again from February 2018 upto June 2019, a period of 1 year and 8 months.
2. In response to this application, Ms Joy for the state submitted that the applicant had taken plea on September 22, 2016 and was released on February 2, 2016. That he was later arrested again on June 3, 2019. That the applicant ought only to be considered for 5 months.
3. I have considered the submissions made by the 2 sides in favour of and against this application. I have also considered the proceedings of the trial court. The applicant was charged with upto 9 counts. This was on September 22, 2016. He was convicted on all the counts. On December 14, 2021, he was sentenced to serve 3 years imprisonment on each count. The sentence were ordered to run concurrently from the date he was placed in remand.
4. I have considered the sentence proceedings of the court of December 14, 2021. In the said proceedings the court made no mention of the period the applicant spent in custody pending determination of his case. The period in question is from September 22, 2016 to February 2, 2017, totaling 4 months and



14 days. The other period and stint the applicant seeks relate to a different case not related to this case. The same is therefore rejected in this matter.

5. Section 333(2) declares that such period spent in remand custody while awaiting determination of a case be accounted for in the sentence. As said above, the Honourable learned trial magistrate did not give account to the same in the sentence. I accordingly allow this application. The sentence of the applicant of 3 years imprisonment on each of the 9 counts are accordingly each reduced by 4 months and 14 days, the period he spent in custody awaiting determination of his case. **Orders accordingly**

**HON D O OGEMBO**

**JUDGE**

**24<sup>TH</sup> JANUARY, 2023.**

Court:

Ruling read out in open court in presence of the applicant (Nairobi Remand) and Ms. Oduor for Respondent.

**HON D O OGEMBO**

**JUDGE**

