



REPUBLIC OF KENYA



Jaso v Republic (Petition E001 of 2023) [2023] KEHC 2791 (KLR) (30 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2791 (KLR)

REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
PETITION E001 OF 2023
JN NJAGI, J
MARCH 30, 2023

BETWEEN

DABASO BUKICHA JASO PETITIONER

AND

REPUBLIC RESPONDENT

((In the matter arising from Marsabit High Court Criminal Case No.2 of 2015))

RULING

1. The Petitioner herein was on the 19th December 2017 sentenced by the High Court at Marsabit (Chitembwe J.) to serve 18 years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the *Penal Code*. The Petitioner has now filed this Petition complaining that the trial court did not take into consideration the provisions of section 333(2) of the *Criminal Procedure Code* when sentencing him of the offence. The section requires that where a person being sentenced has prior to the sentence been held in custody, the sentence shall take account of the period spent in custody. The Appellant hence seeks for an order that the period spent in custody be taken into account and be deducted from the imposed sentence of 18 years. He further seeks for an order that the imposed sentence of 18 years commences from the date of arrest and not from the date he was convicted so as to comply with the provisions of section 333(1) of the *CPC*.
2. The state did not make a reply on the petition but left it on the court to decide on the matter.
3. The Petitioner argued that he is entitled to all the benefit of the law as stipulated in Article 25(c), 27(1)(2), 50(2)(p) and 51(1) of the *Constitution*. That failure to take into account the period spent in custody was unfair and amounted to discrimination on his part. The Petitioner made reliance on the case of *Abdul Aziz Oduor & another v Republic* [2019] eKLR where the appellants were convicted of two counts of robbery with violence and Kimaru J. (as he then was) ordered for the period that the Appellants were in remand custody of five years and four months be taken into account and the sentence of fourteen years imprisonment imposed by the trial court be reduced by the said period.



4. In sentencing the Petitioner to 18 years imprisonment the learned trial Judge stated as follows:

“I do find that the accused should suffer a period in prison for his unlawful actions. The accused is hereby sentenced to eighteen (18) years imprisonment having taken into account his current age.”

5. I have considered the Petition and the grounds adduced in support thereof. The law as provided in section 333(2) of the CPC is that a sentencing court is required to take into account the period spent in custody when sentencing an accused person who has been in custody awaiting trial. The learned trial Judge in this case did not indicate whether he had taken into account the period spent in custody before sentencing the Petitioner to 18 years imprisonment. In Abmad Abolfathi Mohammed & another Criminal Appeal no 135 of 2016 (unreported) where the trial court does not seem to have taken into account the period spent in custody, the Court of Appeal held thus:

“By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.”

6. Since the trial court in this matter did not take into account the period spent in custody when sentencing the Petitioner, I find the petition to be merited. I take guidance in the above quoted Court of Appeal decision that the imposed sentence is required to be reduced proportionately by the period already spent in custody.

7. I have called for and perused the original murder file in this matter. The Appellant first appeared for plea at Meru High Court on the 31st March 2014. He was sentenced on 19th December 2017. I thereby order for the imposed sentence of 18 years imprisonment be reduced by the period that the Appellant spent in custody by the sentence commencing on the date of plea, i.e. on 31st March 2014.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT MARSABIT THIS 30TH DAY OF MARCH 2023.

J. N. NJAGI

JUDGE

In the presence of:

Mr. Otieno for Respondent

Appellant – present

Court Assistant - Jillo



14 days R/A.

