



**Langat v Republic (Miscellaneous Criminal Application  
E012 of 2021) [2023] KEHC 2509 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2509 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BOMET  
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2021**

**RL KORIR, J  
MARCH 29, 2023**

**BETWEEN**

**ERICK KIPKORIR LANGAT ALIAS KIPRONO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(On March 5, 2020, the Applicant was sentenced to serve eight years imprisonment by Dulu J)*

**RULING**

1. Erick Kipkorir Langat alias Kiprono, the Applicant herein was originally charged with the offence of murder which was later commuted to manslaughter after the Applicant entered into a plea bargaining agreement with the Respondent. He pleaded guilty to the charge of manslaughter and was convicted and sentenced to serve 8 years imprisonment.
2. The Applicant filed a Notice of Motion Application dated February 3, 2021. The Applicant sought to have the time he spent in Remand be included in his Sentence. That he had spent 2 years and 4 months in Remand and that he wanted that period to be computed in the sentence pursuant to section 137 (1) and (2) of the [Criminal Procedure Code](#).
3. Mr. Njeru, the prosecution counsel in his oral submissions in court stated that he did not oppose the Application. He further submitted that the sentence of 8 years was lenient. The Applicant on the other hand submitted that he wanted his sentence reduced.
4. Upon considering the Application, the trial court proceedings and the opposing submissions of the parties, the only issue for determination is whether the Application is merited and sentence ought to be reduced.



5. In the circumstances of the case, the relevant section of law is Section 333(2) of the [Criminal Procedure Code](#) which provides that:-

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.

6. The foregoing provision of the law imposes an obligation on the trial court to take into account the period the Accused has spent in Remand in the determination of an appropriate sentence. The Court of Appeal in [Ahmad Abolfathi Mohammed & Another](#) (2018) eKLR 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.”

See also the Court of Appeal case of [Bethwel Wilson Kibor v Republic](#) (2009) eKLR.

7. Similarly in the case of [Bukonya v Uganda](#) (Criminal Appeal No 17 of 2010) [2012] UGSC 3 (29 January 2013), the Supreme Court of Uganda stated that:-

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause (8). It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement. (Emphasis Added)

8. The [Judiciary Sentencing Policy Guidelines](#) at paragraphs 7.10 and 7.11 state that:-

“The proviso to section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed.



In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

9. The Applicant was charged with the offence of murder but plea bargained and pleaded guilty to the offence of manslaughter. On March 5, 2020, the Applicant was sentenced to serve eight years imprisonment by Dulu J. In passing the Sentence, Dulu J stated:-

“..... I have considered that the accused is a first offender and is remorseful. He has been in custody since 2017 more than 2 years now. I have also considered that the accused pleaded guilty and did not waste our time”.

10. The penal section for the offence of manslaughter is Section 205 of the *Penal Code* which provides that:-

Any person who commits the felony of manslaughter is liable to imprisonment for life.

11. In passing his Sentence, Dulu J considered that the first accused was a first offender, that he had plea bargained and most importantly considered that he had been in custody for over 2 years. The learned Judge did not indicate when the Sentence should start. However, a reading of his sentence ruling clearly shows that he took into consideration the 2 year remand period.

12. In exercise of my discretion and taking into account the circumstances of this case and the nature of the sentence, I am persuaded by *Bukenya v Uganda* (supra) where the court stated that taking into the account the period spent in Remand was not a mathematical operation of subtracting time served in Remand from the main sentence. That it was enough that the court considered such period and that period was noted in the Ruling, as it was in the present case.

13. It is therefore my finding that the period spent in Remand by the Applicant was considered and factored in by Dulu J. in handing down the 8 year sentence.

14. In the end, the Notice of Motion Application dated February 3, 2021 has no merit and is hereby dismissed.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED THIS 29<sup>TH</sup> DAY OF MARCH, 2023.**

.....

**R. LAGAT-KORIR**

**JUDGE**

Ruling delivered in the presence of the Applicant, Ms. Boiyon holding brief for Mr. Njeru for the State and Susan/Siele (Court Assistant)

