



REPUBLIC OF KENYA



KENYA LAW
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**Mbetu v Republic (Criminal Revision 248 of 2019)
[2023] KEHC 2476 (KLR) (Crim) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2476 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION 248 OF 2019
DO OGEMBO, J
MARCH 27, 2023**

BETWEEN

FRANCIS TEMBULA MBETU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Francis Tembula Mbetu, the applicant herein, has moved this court by way of chamber summons application filed herein on September 20, 2019, seeking revision of the sentence meted out against him by the trial court. Together with the Chamber Summons, the applicant has filed a “Memorandum of revision” in which he pleads that the period he spent in custody awaiting trial be accounted for in his sentence in accordance with section 333(2) of the *Criminal Procedure Code*. These are the same submissions he made in court when the matter came up in court on October 26, 2021.
2. The application of the applicant is otherwise also supported by an affidavit sworn on 30.7.2019. In the said affidavit, the applicant has deponed that he had been sentenced to serve a term of 5 years imprisonment with an option of a fine of Kshs. 1 million for the offence of being in possession of wildlife trophy contrary to section 95 of the *Wildlife Conservation And Management Act*, 2013. This was on October 30, 2018.
3. He has further pleaded that he is an old man of 64 years with grandchildren. He pleads for revision of both the prison term and the fine.
4. Mr. Mutuma, learned counsel for the state, in his short submissions did not oppose the application for revision of the sentence in case the trial court did not indeed account for the period spent in custody in the sentence.



5. I have considered the submissions of both sides. The proviso to Section 333(2) of the *Criminal Procedure Code* directs that in passing sentence, account ought to be given of the period the accused (applicant) has spent in remand custody awaiting the determination of his case.
6. I have in this event perused the sentence proceedings of October 10, 2018. In the same proceedings, the trial court clearly noted that it had taken into account the period the applicant had taken in custody.
7. It is for this reason that the application of the applicant based on section 333(2) of the *Criminal Procedure Code* must fail for lack of merit.
8. On the 2nd limb of the application, it seeks revision of the sentence on compassionate grounds of age and that the said sentence is excessive. Section 362 of the *Criminal Procedure Code* states;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceeding of any such subordinate court.”
9. The powers of the High Court on revision (Section 364 of *Criminal Procedure Code*, are declared to be the same as the powers of the court on appeal under section 354, 357 and 358 of the said *Act*. I have carefully considered the said provisions. And amongst such powers of the court, at section 354(3)(ii), the court may;

“alter the finding maintaining the sentence, or, with or without altering the finding, reduce or increase the sentence.”
10. With this in mind, I have considered the circumstances of this case. The applicant faced a charge of being in possession of wildlife trophy contrary to section 95 of the *Wildlife Conservation and Management Act* 2013. The charge sheet, in its particulars, referred to 2 leopard skins.
11. Section 95, under which the applicant was charged provides for a sentence of a fine of not less than 1 million or a term of imprisonment of not less than 12 months or to both such fine and imprisonment.
12. I have in the circumstances, considered the nature of the charge the applicant faced, the sentence provided for in the law and the sentence as passed by the trial court. I have also considered the mitigation of the applicant, particularly, his advanced age at 64 years at July 2019.
13. I am therefore convinced that it is proper and just to revise the sentence herein in favour of the applicant who has been in custody from the time he was first arraigned in court on November 29, 2017. I accordingly allow the application of the applicant filed herein on September 20, 2019 and reduce the sentence of the applicant to the period already served. The applicant is ordered to be released forthwith unless lawfully held.

HON. D. O. OGEMBO

JUDGE

27TH MARCH, 2023

COURT:

Ruling read out in open court (on-line) in presence of the appellant (Ruiru Prison), and Ms. Chege for the state.

HON. D. O. OGEMBO



JUDGE

27TH MARCH, 2023.

From: High Court Appellate Side

To: @G.K. Ruiru

Info: PHQ.

27th March, 2023

HCCR Revision. no. 248 of 2019

High Court Criminal Revision No. 248 of 2019 originating from the Chief Magistrate's Court at Kibera Criminal Case No. 3703 of 2018. Applicant rur/1613/18/lr Francis Tembule Mbetu I accordingly allow the application of the applicant filed herein on 20.9.2019 and reduce the sentence of the applicant to the period already served. the applicant is ordered to be released forthwith unless lawfully held.

DEPUTY REGISTRAR

