



**Tanui v Republic (Miscellaneous Criminal Application E065 of 2022)
[2023] KEHC 21736 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21736 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E065 OF 2022
RN NYAKUNDI, J
AUGUST 10, 2023**

BETWEEN

MOSES KIBITOK TANUI APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from Iten CMCCRC 1057 of 2016.)

RULING

Coram: Before Hon. Justice R. Nyakundi

Mr. Martim for the Appellant

Mr. Okok for DPP

1. The applicant approached this court vide a notice of motion application filed on August 23, 2022 seeking for a review of his sentence to consider the time spent in remand. The applicant was charged with the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#) in Iten CMCCRC 1057 of 2016. He was convicted and sentenced to death, which sentence was reduced to 10 years' imprisonment vide High Court Criminal Appeal No 124B of 2019.

Analysis & Determination

2. Section 333(2) of the [Criminal Procedure Code](#) provides:-

“Subject to the provisions of Section 38 of the [Penal Code](#), 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

3. According to The Judiciary [Sentencing Policy Guidelines](#):

“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.”

4. I have perused the judgement of the high court by Hon Justice HA Omondi and she acknowledged that the appellant had been in custody since 2016. She directed the sentence run from the date of conviction at paragraph 19 of her judgement. It is my considered view that in stating that the sentence run from the date of conviction, after acknowledging how long the appellant had been in custody, she had considered the time spent in remand when sentencing him to 10 years’ imprisonment. This is compounded with the fact that the applicant was charged, tried and convicted in the same year.

5. In the premises, the application is hereby dismissed.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 10TH DAY OF AUGUST 2023

R. NYAKUNDI

JUDGE

