



**Kamau v Republic (Criminal Revision E304 of 2023)  
[2023] KEHC 21290 (KLR) (Crim) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21290 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E304 OF 2023  
LN MUTENDE, J  
AUGUST 10, 2023**

**BETWEEN**

**JAMES MUNGAI KAMAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. James Mungai Kamau, the applicant, was arrested on April 20, 2022 and arraigned for the offence of stealing contrary to section 268(2) (a) as read with section 278A of the *Penal Code*. Particulars of the offence were that on the 19<sup>th</sup> day of April, 2022 he stole a motorcycle registration number KMFY594Q make Boxer white in colour valued at Kenya Shillings One Hundred and Fourty one Thousand, Seven Hundred and Ninety-One (Ksh 141,791), the property of Kombo Nzoya Nzaphila.
2. At the outset the applicant denied having committed the offence. But subsequently, he opted to enter into a plea bargain with the State, in the result he pleaded guilty to the charge whereby the court opted to impose a lenient sentence of one (1) year imprisonment instead of the penalty of up to seven (7) years imprisonment.
3. It is now submitted by the appellant that the court failed to comply with the law as provided by section 333(2) of the *Criminal Procedure Code* (CPC) which provide thus;

“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”



4. During pendency of trial, the applicant was in remand custody as he could not post bail. 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.”

5. In meting out sentence the trial court appreciated that the applicant was quite young and a first offender who had been in custody for about one year. Based on that, it formed the opinion to sentence him to one-year imprisonment. The court however, failed to strictly comply with section 333(2) of the [CPC](#). In the premises, the applicant has already served the one (1) year imprisonment.

6. Consequently, I find the application having merit, the applicant shall be released forthwith unless otherwise lawfully held.

7. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 10<sup>TH</sup> DAY OF AUGUST, 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Mr, Kiragu for DPP

C/A Mutai

