



**Gathogo v Republic (Criminal Revision 254 of 2019)  
[2023] KEHC 22647 (KLR) (Crim) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEHC 22647 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL REVISION 254 OF 2019**

**DR KAVEDZA, J  
SEPTEMBER 27, 2023**

**BETWEEN**

**JOHN MUTHARIA GATHOGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is an application dated March 14, 2023 wherein the applicant seeks a revision of his sentence. He prays that the court takes into account the two (2) years he spent in pre-trial custody and revise his sentence.
2. The application is supported by an affidavit sworn by the applicant, John Mutharia Gathogo, reiterating the same ground. The application is not opposed by the State.
3. While the application is premised on the provisions of section 333 (2) of the *Criminal Procedure Code*, it invokes the revisionary jurisdiction of this court which is donated by section 362 of the Criminal Procedure Code which reads as follows:

“...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 proceedings of any such subordinate court.
4. Further, section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides that:

“(2) 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.”

5. The Judiciary *Sentencing Policy Guidelines* states as follows as regards the section:

“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.”

6. Based on the foregoing decisions and the existing jurisprudence, I allow the application and direct that the period spent in custody be included in the computation, that is to say, that the sentence shall run effective from the date of arrest.

7. The Prisons Officers to compute the days.

File closed.

**RULING DATED AND DELIVERED VIRTUALLY THIS 27<sup>TH</sup> DAY OF SEPTEMBER 2023.**

**D.KAVEDZA**

**JUDGE**

**In the presence of:**

Mr Mutuma for the State

Applicant present on the platform

Joy C/A

