



**Echom v Republic (Miscellaneous Criminal Appeal E132 of 2023)
[2023] KEHC 25962 (KLR) (29 November 2023) (Judgment)**

Neutral citation: [2023] KEHC 25962 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
MISCELLANEOUS CRIMINAL APPEAL E132 OF 2023
RN NYAKUNDI, J
NOVEMBER 29, 2023**

BETWEEN

NGOWASA TENDE ECHOM APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The applicant was charged in the lower court with the offence of murder contrary to section 203 as read with section 204 of the *Penal code*. The applicant was convicted of the said charge and a sentence of 10 years was imposed. The applicant being aggrieved preferred an application challenging the impugned judgment on the basis of section 333(2) of the *Criminal Procedure Code*.
2. The applicant now seeks review of the sentence pursuant to Section 333(2) of the *Criminal Procedure code*. The applicant prays that the court considers the said provision and take into account the time he has been in custody.

Analysis And Determination

3. I have considered the application and the court's mandate is to determine the application of section 333(2) of the *Criminal procedure code*. The section provides as follows:
 - (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.
4. The *Judiciary Sentencing Policy Guidelines* are also clear in this respect. They require that the court should take into account the time already served in custody if the convicted person had been in custody



during the trial. Further, that a failure to do so would impact on the overall period of detention which would result in excessive punishment that in turn would be disproportionate to the offence committed.

5. This Court associates itself with the decision of the High Court by Hon. G. V. Odunga J in *Vincent Sila Jona & 87 Others vs Kenya Prison Service & 2 Others* [2021] eKLR where a joint petition was filed by 51 Petitioners whose sentences had not taken into account the time spent in remand and in order to enhance fundamental rights and freedoms of Petitioners while upholding the intention of the sentencing Court sought declaration on compliance with Section 333(2) *CPC*. The Court held as follows;

A declaration that Trial Courts are enjoined by Section 333(2) of the *Criminal Procedure Code*, in imposing sentences, other than sentence of death to take into account of the period spent in custody.

A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by the High Court in order to determine their appropriate sentences.

A declaration that Section 333(2) *CPC* applies to the original sentence as well as sentence imposed during resentencing.....

6. The requirement to comply with Section 333(2) *CPC* is mandatory in computation of the sentence to be served by the Convict upon sentencing. The requirement is also amplified by the *Judiciary Sentencing Policy* and thus an integral part of sentencing process to avoid excessive punishment that is not proportional to the offence committed and sentence lawfully prescribed and contrary to Article 29 (a) & Article 50 *COK* 2010.
7. The Applicant was convicted on 30th March, 2023 when judgment was read out and after mitigation, he was sentenced to serve 10 years imprisonment. The court in sentencing the accused person was not clear on when the sentence would start running. I share the same thoughts as the court in *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR that the trial court should have directed the applicant's sentence of imprisonment to run from the date of arrest on 15th April, 2020.
8. Therefore, in consonance with Section 333(2) *Criminal Procedure Code*; computation of the sentence ought to include the period the Accused person was in custody during hearing and determination of the case before sentence was meted out.
9. The Accused was placed in custody on 15th April, 2020 and sentenced on 31st May, 2023. The 10 years ought to start running from April 2020 when he was placed in custody to May 2023 when he was sentenced to serve 10 years imprisonment.
10. The sentencing process and its outcome are within the mandate of the trial court. However, since circumstances vary from a case to another, this court shall intervene in exercise of revision pursuant to Article 165(3) *COK* where mandatory provisions of the law have not been complied with.

The Applicant's Miscellaneous Application is granted as follows;

11. Section 333(2) *CPC* mandates the 10 years imprisonment sentence granted by the Trial Court on 31st May 2023, served by the Applicant shall be computed to include the period the Applicant was in custody before sentence, to commence from 15th April, 2020. Right of appeal explained.

DATED AND SIGNED AT LODWAR THIS 29TH DAY OF NOVEMBER, 2023

And in the presence of;



Mr. Kakoi for the state

Applicant in person

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R. NYAKUNDI

JUDGE

