



REPUBLIC OF KENYA



**Awalo & another v Republic (Criminal Petition E008 of 2021)
[2023] KEHC 27109 (KLR) (19 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 27109 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL PETITION E008 OF 2021
SC CHIRCHIR, J
DECEMBER 19, 2023**

BETWEEN

PATRICK AWALO 1ST APPLICANT

KENNEDY EMITETI 2ND APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioners were charged before the High court at Kakamega with the offence of murder, tried, convicted and sentenced to 30 years in prison.
2. Dissatisfied with the outcome, the petitioners moved to the court of Appeal. The court of Appeal, in a judgment delivered on 21st November 2019 dismissed the Appeal on both conviction and sentence.
3. They have brought the present Application seeking for a declaration that their rights pursuant to the provisions of section section 333(2) of the *Criminal Procedure Code* were violated, in that the period they had spent in custody should have been taken into consideration.

Determination

4. The main issue for determination is whether the Applicants are deserving of resentencing for the reasons, and in the manner, they have proposed.
5. Section 333 (2) of the *Criminal Procedure Code* requires a court which is passing sentence on an accused person to consider the period spent in custody by the accused person while awaiting trial. This provision is reiterated under paragraph 7: 10 of the Judiciary sentencing policy guidelines.



6. In the present case, while sentencing the accused, Justice Sitati (as she then was),stated as follows:

“The court notes that the two accused persons have been in custody for 10 years ; and that they are remorseful. It is however not lost to the court that the offence of murder of which the two accused persons were found guilty and convicted carries with it the mandatory sentence of Death. The above notwithstanding and considering the mitigation, I sentence each of the accused persons to thirty (30) years imprisonment”. (Emphasis added)

7. Thus, when sentencing the accused persons, the Judge clearly stated that she had noted the 10 years spent in custody by the accused persons. In stating so, the Judge was in effect complying with section 333(2) of the *criminal procedure code*.

8. Further, save to cite Article 165 (3) (a) (b) of the *constitution*, the petitioners have not demonstrated which of their rights were violated. But even then, considering that the Judge had complied with the aforesaid section of the criminal procedure code, there is no right that can be said to have been violated.

9. I have also perused the judgment of the Court of Appeal, and I find that the said court addressed itself to both conviction and sentence of the accused persons and dismissed their Appeal on both grounds.

10. I do not find any merit in this petition. It is hereby dismissed.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 19TH DAY OF DECEMBER, 2023

S. CHIRCHIR

JUDGE.

In the presence of:

Ms . Ogoro for the Respondent.

No appearance by the Applicants.

