



**Migwi v Republic (Miscellaneous Criminal Application
9 of 2020) [2022] KEHC 10395 (KLR) (31 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 10395 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION 9 OF 2020
GWN MACHARIA, J
MARCH 31, 2022**

BETWEEN

DANIEL GITAU MIGWI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein prays for review of his sentence by the same being substituted with a non-custodial one or that the period he served in remand custody prior to sentencing be taken into account.
2. The Respondent did not oppose the application.
3. The application is by way of Chamber Summons filed on 6th March, 2020 and supported by a self-sworn affidavit of even date.
4. The Applicant was the 1st accused and was jointly charged with another with 3 counts of House Breaking contrary to Section 304 (1) (b) and Stealing contrary to Section 279 (b) of the *Penal Code*. He was further charged with the offence of Handling Stolen Goods contrary to Section 322 (2) of the Penal Code.
5. The Applicant was found guilty in Count I and convicted accordingly. The 2nd accused was acquitted. The Applicant was then sentenced to serve 4 years' imprisonment.
6. From the charge sheet, the Applicant was arrested on 3rd November, 2019. The sentence was passed on 27th February, 2020. He was in remand custody throughout the trial period. To date, the period spent in custody translates into 2 years and four months. He was a first offender. Taking into account that one of the purposes of sentence is to rehabilitate an offender, it is my view that the Applicant has served sufficient sentence.



7. Accordingly, I set aside the remainder of the sentence and order that the Applicant be forthwith set free unless otherwise lawfully held.

8. It is so ordered.

DATED AND DELIVERED THIS 31ST DAY OF MARCH, 2022.

G. W. NGENYE-MACHARIA

JUDGE

In the presence of: -

Applicant in person.

Ms. Maingi for the Respondent.

