



**Mwaura v Republic (Miscellaneous Criminal Application
E030 of 2020) [2022] KEHC 10299 (KLR) (31 March 2022) (Ruling)**

Neutral citation: [2022] KEHC 10299 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2020
GWN MACHARIA, J
MARCH 31, 2022**

BETWEEN

RICHARD NDUBA MWAURA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application by the Applicant seeks that the period served in remand custody be taken into account to constitute part of the sentence. The same is by way of Chamber Summons filed on 28th December, 2020 and supported by a self-sworn affidavit filed on even date.
2. The Respondent had no objection to the application.
3. Referring to the trial court record, the Applicant was charged at Naivasha Law Courts in Criminal Case No. 366 of 2019 with threatening to kill contrary to Section 223 (1) of the Penal Code with particulars being that on 25th day of February, 2019 at Nyondia Village in Naivasha Sub-County within Nakuru County threatened to kill Lydia Waithera Mwaura by grabbing her neck to strangle.
4. The Applicant was convicted accordingly and sentenced to serve 6 years' imprisonment on 4th June, 2020.
5. In passing her sentence, the learned trial magistrate stated that she had considered the period the Applicant had served in remand custody prior to the conviction. Under Section 222 (1) of the [Penal Code](#), any person convicted of the offence of threats to kill is liable to imprisonment for 10 years.
6. A look at the trial court record shows that the Applicant was in remand throughout the trial. From the charge sheet, he was arrested on 6th March, 2019. Having been sentenced on 4th June, 2020 means that he was in remand custody for 1 year 2 months and 28 days. Hence, if this period were to be added to the sentence would mean that he will serve a jail term of 7 years 3 months and 28 days. This is in excess



of 2/3 of the possible term of imprisonment he would serve if remission is considered. I have noted that he is not a first offender having been convicted in February 2019 with Possession of Narcotics in Criminal Case No. 2343 of 2018. Be that as it may, I take the view that the sentence imposed was excessive. As such, reducing the same by the number of the period served in custody would serve the purpose of retribution and reformation.

7. Accordingly, the application succeeds. The period of 1 year 2 months and 28 days shall be reduced from the 6 years' imprisonment.

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.

