



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. E023 OF 2022

GERALD KIPKOECH ROTICH.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an application for revision from the judgement of the Hon. Z. Abdul,SRM, dated 10/9/2021

in the Chief Magistrates' Court at Milimani in Criminal Case No. 2329 of 2020,

Republic v Gerald Kipkoech Rotich)

RULING ON REVISION

The applicant moved this court under certificate of urgency pursuant to section 362 of the Criminal Procedure Code (Cap 75) Laws of Kenya seeking an order to revise his sentence of a fine shs 100,000/- in default to serve one year imprisonment imposed upon him in respect of the offence of handling stolen goods contrary to section 322 (1) (2) of the Penal Code ((Cap 63) Laws of Kenya.

The applicant has deposed to a nine (9) paragraphs supporting affidavit in support of his application with the following being the major averments. In that affidavit he has deposed that the trial court in sentencing him did not take into account the pre-trial period of eleven and a half months (11 ½), that is, from 20th August 2020 when he was arrested to 22nd April 2021 when he was released on bail.

The applicant has further deposed that he was sentenced to one year imprisonment with an option of sentence of a fine shs 100,000/-. Additionally, he has deposed that he has one young child with one wife who depend upon him for their upkeep.

Furthermore, he has requested the court to review his sentence and proceed to place him on probation as this will enable him to provide for his family.

I declined to allow the respondent to respond as it was not necessary; as the issue raised by the applicant was solely one of law.

I have perused the judgement and proceedings of the lower court. I find that the applicant was arrested on 20th August 2020. I also find that he was released on bail on 22nd April 2021.

I further find that he now has been in pre-trial custody for a period of about eleven and a half months. This period was not taken into account by the trial court in sentencing the applicant.

I find that under section 333 (2) of the Criminal Procedure Code, the trial court should have taken that period into account in sentencing the applicant.

In failing to take that period into account the trial court committed an error of law, which entitles this court to interfere with the sentence that was imposed.

In the premises, I hereby review the said sentence with the result that it is hereby reduced to the period already served.

Consequently, the applicant is hereby ordered released unless he is held on other lawful warrants.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 28TH DAY OF APRIL 2022.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

The applicant – present in person

Ms Joy for the Respondent