



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Republic v Maina (Criminal Case 114 of 2022)
[2022] KEHC 12237 (KLR) (31 May 2022) (Ruling)**

Neutral citation: [2022] KEHC 12237 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 114 OF 2022**

J WAKIAGA, J

MAY 31, 2022

BETWEEN

REPUBLIC PROSECUTION

AND

ROBERT KARANJA MAINA ACCUSED

(The applicant had two cases before the honourable court one being Kandara Criminal Case No 803 of 2018, where he was sentenced to three years imprisonment. The other case is Kandara Criminal Case No 1219 of 2017 where he was sentenced to serve five (5) years.)

RULING

1. Upon perusal of the judgements in the lower court, I have noted that the applicant had two cases before the honourable court one being Kandara Criminal Case No 803 of 2018, where he was sentenced to three years imprisonment.
2. The other case is Kandara Criminal Case No 1219 of 2017 where he was sentenced to serve five (5) years.
3. It is clear that in Kandara 803 of 2018, the magistrate in doing sentence had this to say
“Accused has been in custody since June 19, 2018 , let him serve 3 years”
4. I would therefore agree with the submission by Ms Otieno for the DPP that the magistrate took into account the period in custody while passing sentence and therefore complied with section 333(2) of [Criminal Procedure Code](#) was complied with and therefore dismiss the application for revision on Criminal Case No 803 of 2018.



5. As regards Criminal Case No 1219 of 2017 the appellant person appeared in court on December 18, 2017 when plea was taken and whereas the same was granted bond. There is no evidence that he was released from custody.
6. On November 5, 2019, the trial court passed sentence thereon in the following terms:

“I have considered the probation reports the offence is serious. Accused is sentenced to serve 5 years in jail.”
7. There is no evidence that the trial court took into account the period when the accused was in pre-trial and trial custody while passing sentence herein as provided for under the provision of section 333(2) of the *Criminal Procedure Code*.
8. The appellant having not benefited for a lesser sentence by operation of law, is therefore justified in approaching the court by way of revision. I therefore find merit on the application herein undated but filed on March 29, 2022 as regards the sentence on Criminal Case No 1219/2017 which shall be five (5) years from December 18, 2017 when he first appeared before court.
9. For avoidance of doubts each sentence to run on its independently. The appellant have been convicted on two independent charges and causes.

DATED SIGNED AND DELIVERED AT MURANG'A HIS 31ST DAY OF MAY, 2022

J WAKIAGA

JUDGE

May 31, 2022

In the presence of

Appellant

Court assistant – Carol M

