



**Wachugi v Republic (Criminal Revision E054 of 2022)  
[2022] KEHC 10562 (KLR) (Crim) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10562 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E054 OF 2022  
LN MUTENDE, J  
JUNE 22, 2022**

**BETWEEN**

**JOHN NGUGI WACHUGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. John Ngugi Wachugi, the Applicant, was arraigned in court following allegations of having had carnal knowledge of his biological daughter aged five (5) years. He was taken through full trial, convicted and sentenced to serve fifteen (15) years imprisonment.
2. His complaint according to the application filed herein on 29<sup>th</sup> March, 2022 is that the trial court failed to consider time spent in custody as required by Section 333(2) of the *Criminal Procedure Code* (CPC).
3. This court's revisional jurisdiction is conferred by Statute. Section 362 of the CPC provides thus:

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.

4. Section 333(2) of the CPC provides thus:

Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the



person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

5. In the case of *Abamad Abolfathi Mohammed and another Vs. Republic* (2018 eKLR the Court of Appeal stated that:

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. That provision provides as follows:

“333(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection

(1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

The appellants have been in custody from the date of their arrest on 19th June 2012. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(s) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.”

6. This is a case where the State through learned Counsel Ms. Adhiambo conceded the application. Counsel urged that the trial court did not pronounce itself on the period the applicant was in custody, prior to being released on bail.
7. I have perused the record of the trial court. It is apparent that it failed to exercise its jurisdiction by taking into account time that the applicant was incarcerated. He was arrested and arraigned on 7<sup>th</sup> September, 2015 and released on bail on 13<sup>th</sup> June, 2016 having been in custody for nine (9) months.
8. Therefore, I correct the irregularity by setting aside the order of the trial court which I substitute with an order that the applicant (Accused) shall serve a sentence of 14 years, 3 months with effect from the 4<sup>th</sup> day of March, 2020.
9. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 22<sup>ND</sup> DAY OF JUNE, 2022.**



**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Applicant

Ms. Ntabo - DPP

Court Assistant - Mutai

