



REPUBLIC OF KENYA



KENYA LAW

THE NATIONAL COUNCIL FOR LAW REPORTING

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**Shah v Republic (Criminal Revision E076 of 2022)
[2022] KEHC 12041 (KLR) (Crim) (26 July 2022) (Ruling)**

Neutral citation: [2022] KEHC 12041 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E076 OF 2022**

DO OGEMBO, J

JULY 26, 2022

BETWEEN

IQBAL SHAH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Iqgal Shah, has pleaded by way of an application dated and filed herein on 25.4.2022. The said application seeks revision of the sentence meted out against him in Criminal Case No. 753/2018 and Criminal 754/2018. The application, brought under section 333(2) of the Criminal Procedure Code, seeks that this court gives account of the period that he spent in remand custody in the sentence. And also that the sentence was harsh and excessive. The prosecution did not object to the application.
2. Section 333(2) of the Criminal Procedure Code states

“Subject to the provisions of 38 of the penal code, 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 it was 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.”
3. I have considered the sentence proceedings of 19.12.2018 before the trial court. The same does not indicate whether the period the applicant had spent in custody was taken into account in the sentence. The court ought to have done so in view of the proviso to section 333(2) of the criminal procedure code. it is for this reason that I find merit in this application.



4. I accordingly allow the applicant's application dated 25.4.2022 and accordingly order a revision of the sentence of the trial court. The applicant shall serve the sentence as ordered by the trial court. The sentence shall run from 23.4.2018, the date the applicant was first arraigned before the court. Orders accordingly.

D. O. OGEMBO

JUDGE

26.7.2022

Court:

Read out in court in presence of the Ms. Chege for the state and applicant.

D. O. OGEMBO

JUDGE

26.7.2022

TO: @G.K. KITENGELA

INFO: PHQ.

27TH JULY 2022

HCCR REVISION. NO. E076 OF 2022

HIGH COURT CRIMINAL REVISION NO. E076 OF 2022 ORIGINATING FROM THE CHIEF MAGISTRATE'S COURT AT *MILIMANI CRIMINAL CASE NO. 753 OF 2018*. APPLICANT KITE/94/020/LS IQBAL SHAH THE APPLICANT SHALL SERVE THE SENTENCE AS ORDERED BY THE TRIAL COURT. THE SENTENCE SHALL RUN FROM 23.4.2018, THE DATE THE APPLICANT WAS FIRST ARRAIGNED BEFORE THE COURT. ORDERS ACCORDINGLY.

DEPUTY REGISTRAR

