



REPUBLIC OF KENYA



**Mabuka v Republic (Criminal Miscellaneous Application E141 of 2021)
[2022] KEHC 14390 (KLR) (Crim) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL MISCELLANEOUS APPLICATION E141 OF 2021
DO OGEMBO, J
OCTOBER 25, 2022**

BETWEEN

EDINAH KEMUNTO MABUKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This matter is before the court for the undated application of Edinah Kemunto Mabuka the applicant. The application by way of Notice of Motion, of the face of it declares that is brought under section 333(2) of the *Criminal Procedure Code*. It prays (prayer 5) that the period that the applicant spent in custody of 1 year be accounted for in her sentence.
2. The application raises other factors of mitigation for consideration. These factors are:
 1. That the applicant is youthful at only 25 years old and a mother of one.
 2. That she seeks for a second chance.
 3. That she has acquired various skills while in prison.
3. The affidavit in support of this application is dated April 26, 2021. The applicant has further filed written submissions in which she has raised the same mitigation factors. She pleaded for a revision of her sentence to a non-custodial sentence.
4. Incidentally, the applicant also filed another application by way of Chamber Summons. However, since this application raised no substantive prayers and the fact that no submissions were made on the same, it is safe to conclude that this application was filed in mistake. This chamber summons, being incompetent as it is, is accordingly struck out.



5. This ruling is therefore on the undated application by way of Notice of Motion.
6. The prosecution side has similarly filed their set of submissions to the Notice of Motion application of the applicant. The application is opposed. It was submitted that in sentencing the applicant, the court considered all relevant factors including the fact that she was a repeat offender having earlier been convicted and sentenced to serve 4 years' imprisonment in Criminal Case No 373/2018. That the sentence herein was merited. Finally, that the trial court duly considered the time spent in remand custody. It was pleaded that this application be dismissed. I have considered the submissions of both sides. To my mind, this application is brought under 2 distinct limbs.
7. The first limb relate to the general plea for revision of the sentence based on the mitigation factors he applicant has raised. On this, it is worth noting that the applicant was convicted and sentenced for the offence of Child stealing contrary to section 174(1) of the Penal Code. The sentence provided for therein is imprisonment for 7 years. the applicant was however sentenced to serve 5 years' imprisonment. This sentence in my view was both legal and proper. She is also not a first offender.
8. On the application that time spent in custody be considered in the sentence, I have considered the sentence proceedings of June 24, 2019. In the said proceedings, the learned trial magistrate noted in part
9. I have also taken into account the time the accused has been in custody since date of arrest on 20.2.2018 up-to today. Hence 1 year four months.”
10. Clearly therefore in sentencing the applicant, the trial court duly considered the period the applicant had spent in custody awaiting determination of her case. This application of the applicant, based on section 333(2) of the Criminal Procedure Code must fail I so find.
11. The sum total, is that the application of the applicant filed herein on April 22, 2021 is wholly dismissed. Orders accordingly.

D. O. OGEMBO

JUDGE

25TH OCTOBER, 2022.

Court:

RULING READ OUT IN OPEN COURT IN PRESENCE OF THE APPLICANT (LANGATA WOMEN) AND MS. AKUNJA FOR THE STATE.

D. O. OGEMBO

JUDGE

25TH OCTOBER, 2022.

