



**Muoki v Republic (Criminal Revision 182 of 2019)
[2022] KEHC 15570 (KLR) (Crim) (22 November 2022) (Ruling)**

Neutral citation: [2022] KEHC 15570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION 182 OF 2019
DO OGEMBO, J
NOVEMBER 22, 2022**

BETWEEN

ANTHONY MWAURA MUOKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Filed herein on June 25, 2019. The application, brought under section 362 of the *Criminal Procedure Code* and section 333(2) of the same Act, seeks that the sentence of the applicant be revised to account for the period the applicant spent in remand custody pending the hearing and determination of his case before the trial court. He submitted that he had remained in custody from September 12, 2011 upto 2018, a period that the trial court did not factor in the sentence.
2. The prosecution opposed this application on grounds that the trial court had, in sentencing the applicant to 10 years' imprisonment, duly considered the period spent in remand custody. Counsel referred the court to the finding by the Hon. Justice L. Kimaru in the related case No. High Court Criminal Revision No. 21 of 2019, in which a similar application was dismissed.
3. Section 333(2) of the *Criminal Procedure Code* requires that in passing sentence, the court should consider such period an accused person has spent in custody while he awaits the determination of his case.
4. It is clear from the record of the lower court that the applicant faced and was convicted of the offence of robbery with violence contrary to section 295 as read with section 296(2) of the *Penal Code*. The sentence provided therein at section 296(2) is death sentence.



5. I have perused the sentencing proceedings of the lower court of October 4, 2018. It shows that before passing the sentence, the applicant was accorded the opportunity to mitigate. The court went on to note:

“I have considered the above. I have taken into account that accuseds’ are first offenders and are of apparent or relatively young age. They qualify for a lenient sentence. That have also pleaded for mercy. They have been in custody for 6 years. each accused is sentenced to serve 10 years imprisonment. Right of appeal 14 days.”

6. From the above, it is clear that in sentencing the applicant, the trial court considered both his mitigation and the fact that he had spent a period of 6 years in remand custody. The application of the applicant that the trial court failed to account for the period spent in remand custody, therefore is not grounded on fact. This application therefore lacks any merit and must fail. The application of the application filed herein on June 25, 2019 is accordingly dismissed. Orders accordingly

D. O. OGEMBO

JUDGE

22ND NOVEMBER 2022

COURT:

7. Ruling read out in court (on-line) in presence of the applicant (Kiambu prison) and Ms. Ntabo for the respondent.

D. O. OGEMBO

JUDGE

22ND NOVEMBER 2022

