



**Maiyo v Republic (Miscellaneous Criminal Application E069 & E074 of 2021
(Consolidated)) [2022] KEHC 16922 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16922 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E069 & E074 OF 2021 (CONSOLIDATED)
WM MUSYOKA, J
DECEMBER 23, 2022**

BETWEEN

JACOB KIPNYANGO MAIYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. There are two applications by the same applicant. The first application, in No 069 of 2021, is dated June 2, 2021, and seeks reduction of the sentence of 14 years; while the second, in No E074 of 2021, which is undated, seeks that the court orders that the 14 years sentence commence from the date of the applicant's arrest.
2. With regard to reduction of sentence, in a ruling, in Kakamega HC Miscellaneous Application No 122 of 2017, challenging his conviction and sentence for robbery with violence, contrary to section 296(2) of the *Penal Code*, cap 63, Laws of Kenya, the appellate court, on May 30, 2019, upheld the conviction of the applicant, and called for mitigation of sentence. He was eventually sentenced to 14 years imprisonment, in a ruling delivered on February 25, 2020 in the same matter. If the applicant was unhappy with the said ruling, on reduction of the sentence from death to 14 years imprisonment, then he ought to have appealed against it at the Court of Appeal. All the issues he raised in the instant application were considered by Njagi J in that ruling. If he feels that Njagi J did not exercise discretion appropriately, then he should appeal.
3. On the application to have the sentence reckoned from the date of his arrest, again, that was an issue that was before Njagi J, and the judge was alive to it when he imposed the sentence that he did impose. If the applicant was aggrieved, he should have appealed.



4. For avoidance of doubt, Njagi J said, at paragraph 6:

“Section 333(2) of the *Criminal Procedure Code* requires a sentencing court to take into account the period spent in custody awaiting trial.”

5. Then in paragraph 13, he said:

“However, robbery with violence is a very serious offence. People cannot be allowed to reap where they have not sown by use of force. Taking into account that the appellant was in custody for 4 ½ years awaiting trial and considering that he was armed with a pistol when he robbed the victim, I resentence him to serve fourteen years imprisonment commencing from the day of sentence by the lower court.”

6. The 2 issues raised in the 2 applications were exhausted in Kakamega HC Miscellaneous Application No 122 of 2017. I cannot revisit them, without appearing to sit on appeal on what Njagi J had determined. Let the applicant move to the Court of Appeal. There is no merit in the 2 applications, and I hereby dismiss them. Let copies of this ruling be availed to Jacob Kipnyango Maiyo and to the Office of Director of Public Prosecutions Kakamega.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON

THIS 23RD DAY OF DECEMBER 2022

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Jacob Kipnyango Maiyo, the applicant, in person.

Mr. Mwangi, instructed by the Director of Public Prosecutions, for the respondent.

