



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KERICHO

CRIMINAL REVISION NO.20 OF 2019

GIDEON KIMUTAI.....APPLICANT

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

1. The Applicant herein **GIDEON KIMUTAI** was charged with the offence of Murder Contrary to Section 203 as read with Section 204 of the Penal Code.
2. The particulars of the offence were that on 24/3/2013 at Sosiot Trading Centre within Kericho County, the Applicant murdered **VINCENT CHERUIYOT MUTAI**.
3. The Prosecution evidence in brief is that the Applicant respondent answered a distress call from the Deceased's wife and in the process of trying to rescue to the Deceased's wife, the Applicant held the Deceased by the legs and he fell on some rough part of the verandah.
4. The Deceased was carried to the Applicant's house with the help of neighbours where he spent the night. The following day he was taken to Sosiot Health Centre and thereafter to Kericho District Hospital where he succumbed to the injuries and died.
5. The Applicant and the Deceased were both drunk during the time of the incident.
6. The Applicant in his defence said he was asleep in his house on the material day when he heard a neighbor screaming and shouting his name. He went and found his neighbor holding the wife on the floor and hitting her. He separated them by holding the man to enable the lady run away. The man fell down from where he held him. He ran down stairs and found the man was injured
7. The Court found that the Applicant had not premeditated to kill the deceased and he was convicted with the lesser charge of Manslaughter Contrary to Section 202 as read with Section 205 of the Penal Code.
8. The Applicant was sentenced to ten (10) years imprisonment and he is now seeking to have the 3 years he had been in custody prior to sentence included in the final computation and deducted from the ten years.
9. Section 333(2) of the Criminal Procedure Code provides as follows:

“(2) Subject to the provisions of section 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 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.”
10. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced must be taken into account in meting out the sentence
11. I find that Application by the applicant has merit and I allow his application to have the period he was remanded included in the computation of the jail term.
12. The sentence of ten (10) years to start running from 27/3/2013 when the Applicant was first remanded in Custody and not on 20/4/2016

when he was sentenced.

Orders to issue accordingly.

Delivered, signed and dated at Kericho this 22nd day of January, 2021.

A. N. ONGERI

JUDGE