



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL APPEAL NO.E001 OF 2020

AND CRIMINAL REVISION

(BEING REVIEW OF SENTENCE IN CM.CR.C NO.504 OF 2016)

DAVID KINYUA KAIRU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. A brief outline of the case is that the applicant **DAVID KINYUA KAIRU alias TEMPO** was convicted on the charge of Stealing a Firearm c/s 268(1) as read with Section 275 of the Penal and was sentenced to serve a term of three (3) years imprisonment;
2. Being aggrieved by the sentence he filed the instant application seeking a revision on the commencement date of his sentence;
3. At the hearing hereof the applicant was unrepresented whereas the respondent was represented by Prosecuting Counsel Ms Gicheha; all the parties made oral submissions; hereunder are the parties respective submissions;

APPLICANT’S CASE

4. The application is for review of sentence under the provisions of Section 333(2) of the Criminal Procedure Code; he submitted that he was arrested on the 3/05/2016 and convicted on 9/12/2019; he was released on bond up to 29/08/2019 when the same was cancelled upon the demise of the surety; when the sentence was passed the period he had spent in custody after the cancellation of the bond was not factored in the computation of the prison sentence as provided by Section 333(2) of the Criminal Procedure Code;
5. The applicant prayed that the period spent in custody be taken into consideration; so that the commencement date of his sentence be backdated to commence from the date of his re-arrest as opposed to the date of the conviction;

RESPONDENT’S CASE

6. In response counsel was not opposed to the time spent in remand being taken into consideration;

ISSUES FOR DETERMINATION

- (i) After hearing the rival submissions this court has framed only one issue for determination which is whether to review the commencement date of the sentence;

ANALYSIS

Whether to review the commencement date of the sentence:

7. The applicant has requested that the provisions of Section 333(2) of the Criminal Procedure Code be invoked and prayed for an order that the sentence imposed to start from the date of re-arrest.
8. The provisions of Section 333(2) of the Criminal Procedure Code reads as follows;

“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date of which it was pronounced, except where otherwise it is 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”.

9. The record reflects that the applicant was arrested on the 3/05/2016 and convicted on 9/12/2019; in between he had been admitted and had been released on bond up to 29/08/2019 when the same was cancelled due to the demise of the surety; he was re-arrested on the 29/08/2019 and remained in custody throughout the tenancy of the trial which was determined on the 9/12/2019;

10. The application was not opposed by the state and this court finds no good reason to deny the applicant the benefits of the provisions of Section 333(2) and is satisfied that the application for the consideration of the period the applicant spent in custody from the date of re-arrest is merited;

11. The applicant was re-arrested on 29/08/2019 and was convicted and sentenced on the 9/12/2019; the period spent in remand translates to approximately three (3) months and eleven (11) days; this period shall be reduced from his sentence.

FINDINGS AND DETERMINATION

12. For the foregoing reasons this court makes the following findings and determinations;

(i) The application for review of the commencement date of the sentences to run from the date of re-arrest is found to be merited and are hereby allowed;

(ii) The sentence shall commence from the date of re-arrest which is 29/08/2019;

Orders accordingly.

DATED, SIGNED AND DELIVERED ELECTRONICALLY AT NYERI THIS 24TH DAY OF JUNE, 2021.

HON. A. MSHILA

JUDGE