



REPUBLIC OF KENYA

HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION 38 OF 2019

DENNIS KIOKO NGUMBI.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

1. The applicant was arrested and charged with the offence of preparation to commit an offence contrary to; Section 308(1) of Penal Code in count one and being in possession of imitation of a firearm contrary to; section 34(3) of the Fire Arms Act, in the second count.

2. He was convicted on count two (2), vide a judgement delivered on 13th December 2017, and, sentenced on 17th January 2018, to serve eight (8) years imprisonment. He now wants the court to review that sentence by invoking the provisions of; Section 333(2) of Criminal Procedure Code, to take into account the period he served in custody before sentence. The Respondent has no objection to the application.

3. In that regard, I have considered the lower court record and I note that, the applicant was arrested on 25th February 2016, and arraigned in court on 29th February 2016. He was in custody throughout the trial to the date of judgment on 9th January 2018 and sentencing on 17th January 2018. That is a period of about two (2) years.

4. I further, note that, when the trial court pronounced the sentence, the Learned Hon. Magistrate stated inter alia that, the court had considered; the fact that, the offence carries a minimum sentence of seven (7) years and a maximum of fifteen (15) years. Further, the circumstances of the offence and the period the applicant was in custody had not been considered.

5. In fact, it is clear on record that, the learned trial Magistrate stated that, the court would have given the applicant a more severe sentence but took into account “the two years he had spent in custody”. It is therefore evident that, the two years he was in custody have already been considered. Indeed, the provision of;

Section 333(2) of the Criminal Procedure Code cannot be applied twice.

6. As such, if this court were to consider it again, it will be interfering with the discretionary power of the trial court in sentencing and for no apparent lawful reason; that would be unlawful. That in the given circumstances, again the sentence cannot run from, the date of arrest and/or arraignment in court, as that is already catered for, by the trial court’s order.

7. The upshot is that, I find no merit in the application and I decline to, allow the application as prayed.

It is so ordered.

Dated, delivered virtually and signed this 23rd day of June 2021.

GRACE L. NZIOKA

JUDGE

In the presence of:

No appearance for the applicant.

Applicant present in person.

Mr Mutuma for the Respondent.

Edwin Ombuna; the Court Assistant