



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION E092 OF 2021

AUSTINE ODUOR OMONDI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, **AUSTINE ODUOR OMONDI** *alias* **GEOFFREY OSORO ONDERE** has moved this court by way of a Notice of Motion application filed herein on 25.3.2021. The same, brought under section 333(2) of the Criminal Procedure Code, seeks that the sentence of the lower court be reviewed so as to account for the period he spent in remand custody awaiting determination of his case. He claims for a total of 17 months.

In opposing the application, Mr. Kiragu, counsel for the state, submitted that this application lacks merit as the applicant was accorded opportunity to mitigate, and that the trial court had duly considered the time the applicant had spent in custody awaiting trial.

I have considered the submissions of both the applicant and the state. The proviso to section 333(2) of the criminal procedure code states;

“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”

The issue herein is whether in sentencing the applicant, the trial court took into account the period the applicant had spent in custody awaiting determination of his case. I have noted the following material facts in this matter;-

- i. On count I of Forgery, the sentence under section 349 of the Penal Code is an imprisonment term of 3 years. the trial court sentenced the applicant to a fine of Ksh.150,000/= or in default to serve 6 months imprisonment.**
- ii. For Count II of uttering a False Document, section 353 of the Penal Code provides for a sentence of 3 years imprisonment as in (i) above. The trial court sentenced the applicant to a fine of Ksh.50,000/= or in default to serve 6 months imprisonment.**
- iii. For alternative to count III, the penalty under section 322(1)(2) of the Penal Code, the sentence is imprisonment with hard labour for upto 14 years. The applicant was herein sentenced to a fine of Kshs. 900,000/= and in default to serve 12 months imprisonment.**
- iv. On Count 4, the sentence under section 36 of the Penal Code is a term not exceeding 2 years. On this, the applicant was sentenced to a fine of Ksh.100,000/= or in default to serve 12 months imprisonment.**
- v. This is clear from the record of the proceedings that when accorded the opportunity to mitigate on 27.1.2020, the applicant raised the issue of the time he had spent in custody while he awaited the determination of his case.**
- vi. And in the sentence proceedings, the learned trial magistrate, clearly noted as taking into account the mitigation of the applicant, including the period served in custody.**

I am in the circumstances persuaded by the submissions of counsel for the state that indeed in sentencing, the trial court already took into account the period the applicant had taken in custody. Proof of this is in fact exhibited in the lenient sentences placed on the applicant on each count.

Lastly, I also note that this matter has previously come up for consideration for an alternative of a non-custodial sentence and upon consideration of the same, the Hon. J. Lesiit (as she then was), ruled that same was not eligible for review.

In the circumstances, I am not convinced that the application of the applicant filed herein on 25.3.2021 has any merits. I dismiss the same and order that the applicant do serve his sentence as ordered by the trial court.

D. O. OGEMBO

JUDGE

28.7.2021.

Court:

Ruling read out in presence of the accused (Jamhuri Prison) and Mr. Kiragu for the state.

D. O. OGEMBO

JUDGE

28.7.2021.