



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**MISC. CRIMINAL APPLICATION NO. E115 OF 2021**

**CORAM: R.E. ABURILI, J**

**ISAACK OTIENO OCHERE.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(An Application arising from conviction and sentence  
of the High Court at Siaya in Cr. Case No. 29 of 2015)*

**RULING**

1. The applicant convict was sentenced to serve 10 years imprisonment vide *Siaya HCR 29/2015* vide judgment delivered on and sentence passed on 26/7/2021.
2. The applicant was jointly charged with 3 others for the offence of Murder contrary to Section 203 as read **with Section 204 of the Penal Code**. After a full trial, the applicant was found guilty of the charge of a lesser charge of Manslaughter and after a Presentence report and mitigations were considered, Makau J. sentenced him to serve 10 years imprisonment. He has not appealed. He now prays that this court does consider **Section 333(2) of the Criminal Procedure Code** because he as in remand custody for 2 years and 6 months pending trial.
3. The trial court record availed tome shows that the court granted bail to all the 4 accused persons but the 2<sup>nd</sup> accused who is the applicant herein remained in custody ostensibly because he could not raise the bail and bond terms.
4. There is no indication that he absconded bond. The sentence did not take into account the period spend in custody pending trial.
5. In the circumstances, and as the applicant has not appealed, I find his application merited. I order that the lawful sentence of 10 years imprisonment on the applicant though lenient enough, should have taken into account the period he was in custody. The trial court record is however not typed and therefore it is not easily discernible on what date he was arrested and neither does the information dated 12/5/2015 show and neither does the record show clearly when plea was taken in Kisumu High Court.
6. For the above reasons, I order that the 10 years prison term shall be calculated from the date of arrest of the convict/applicant herein.
7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 16TH DAY OF NOVEMBER, 2021**

**R.E. ABURILI**

**JUDGE**