

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION 73 OF 2019

ALEX KIBE KIBIRUAPPLICANT

VERSUS

REPUBLIC RESPONDENT

RULING

The application of the applicant **ALEX KIBE KIBIRU**, filed herein on 18.3.2019 and dated 8.3.2019 seeks that his sentence be revised to account for the period of 3 years and 6 months that he remained remanded in custody awaiting trial. The prosecution side, through learned counsel, Ms. Kibathi, in response, submitted that the applicant was in custody from 8.12.2014 to 19.7.2018, when sentence was passed.

That the trial court, in sentencing the applicant, had noted that it had taken into account the law, mitigation of the applicant and time spent in remand. That he was sentenced to serve 3 years on each count to run consecutively. In effect therefore, that he was sentenced to a period far less than that provided for of not less than 7 years imprisonment. It was lastly submitted that the court duly considered the period spent in custody.

I have considered the submissions of both the applicant and the prosecution. This is basically an application for revision under section 333(2) of the Criminal Procedure Code, which declares that in sentencing, the court ought to take into account the period that the accused has taken in custody while awaiting determination of his trial.

A closer observation of this matter will assist this court to determine whether or not the trial court complied with this requirement of the law. The applicant was charged with being in possession of a firearm without a firearm certificate contrary to section 4(1)(2)(a) of the Firearms Act, Cap 114 laws. The 2nd count he faced related to ammunitions, under the same section of the law.

Section 4(1)(2)(a) of the Firearms Act, Cap 114 Laws of Kenya, provides for a sentence of not less than 7 years and not more than 15 years imprisonment. In our instant case the court sentenced the applicant to serve 3 years imprisonment on each count. Same were ordered to run consecutively.

In the sentencing proceedings, of 19.7.2018, the applicant was accorded the opportunity to mitigate. In his mitigation, the accused pleaded with the court to take into account the fact that he had been in custody for 2 years. The court proceeded to note that it had considered the mitigation of the accused. It then passed the sentence.

What comes out of the sentence is that the court passed a rather lenient sentence against the applicant. The sentence was in fact way below the minimum sentence provided. And in doing so, it took into account the mitigation of the applicant, including the fact that he had been in custody while his case progressed.

It is therefore incorrect to submit that the trial court had failed to account for the period spent in custody in the sentence meted out. The application of the applicant dated 8.3.2019 therefore lacks in any merit. I dismiss the same wholly Orders accordingly.

D. O. OGEMBO

JUDGE

19.11.2021.

Court:

Ruling read out in presence of the accused (Nairobi West) and Ms. Kibathi for state.

D. O. OGEMBO

JUDGE

19.11.2021.