

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.75 OF 2019

NYAKUSI SAKANJA LUKUMAY.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Nyakusi Sakanja Lukumay was convicted of two counts of **breaking into a building and committing a felony** contrary to **Section 306(a)** of the **Penal Code**. The particulars of the offence were that on 13th October 2017 at Eastleigh in Nairobi County, the Applicant, jointly with others not before court, broke into two shops and did steal therefrom Kshs.1,000,000/- and USD 7,000 the property of Osman Abdi Mohamed. The Applicant was sentenced to serve three (3) years imprisonment in each count. The sentences were ordered to run concurrently. The court further ordered for the Applicant to be repatriated to Tanzania, his country of origin upon completion of the sentence.

The Applicant was aggrieved by the custodial sentence that was imposed on him. He made an application to this court to have the said custodial sentence revised on the ground that the period of one year and one month that he was in remand custody was not taken into account by the trial court when it sentenced him. Ms. Akunja for the State perused the trial court's proceedings and indeed confirmed that from the time the Applicant took plea on 13th October 2017 to the time he was convicted on 16th November 2018, he was in remand custody. Learned State Counsel was not opposed to the court taking into consideration this period in determining the appropriate custodial sentence to be imposed on the Applicant. The Applicant urged the court to favourably consider his application.

This court has considered the application. **Section 333(2)** of the **Criminal Procedure Code** requires the court to take into consideration the period that a convict has been in remand custody before conviction in determining the custodial sentence that should be imposed. In the present application, it was clear to the court that the trial court did not take into account the period of one year and one month that the Applicant was in remand custody before his conviction. This court shall take that period into account as a result of which the Applicant's custodial sentence is commuted to the period already served.

The Applicant is ordered released from prison forthwith and handed over to the Directorate of Immigration to facilitate the Applicant's repatriation to Tanzania, his country of origin. It is so ordered.

DATED AT NAIROBI THIS 20TH DAY OF FEBRUARY 2020

L. KIMARU

JUDGE