



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION CASE NO. 63 OF 2020**

**SHADRACK BARASA BIKET.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant, Shadrack Barasa Biket files this application on 9.3.2020 seeking a revision of the sentence meted out against him on 18.9.2019 in Kibera Chief Magistrates court, Criminal case number 4115 of 2013. In the said case, the applicant was convicted on the charge of warehouse breaking and stealing contrary to section 306(a) as read with section 306(b) of the Penal Code. He was sentenced to serve 7 years imprisonment. This is the sentence he seeks to have reviewed by this court, on the basis that in convicting him, the trial court did not give account of the period he served in custody while awaiting the outcome or determination of his case.

Ms. Nyauncho, learned counsel for the state has opposed this application. First, on the ground that the sentence of 7 years imprisonment was lawful in view of the charge. Secondly also in view of the large quantity of the stolen items (drugs), all valued at Ksh.27,929,030/=. And lastly, that the applicant was not a first offender and was in fact serving a life sentence in another case of robbery with violence i.e Criminal case number 3103/2013.

I have considered the application of the applicant and the objection to it raised by the counsel for the state. Section 333(2) of the Criminal Procedure Code states;-

*Section 333(2) subject to the provisions of section 38 of the Penal Code, every sentence shall be deemed to commence from and to include the whole of the day of the date on which it was pronounced, except where otherwise provided in this code.*

*Provided that the person sentenced under sub-section 1 has prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.*

There is no doubt in my mind that the sentence of 7 years imprisonment meted out against the applicant was lawful and proper. In sentencing the applicant, it is also clear that the trial court, did not indicate whether or not it took into consideration the time the applicant had spent in custody as he awaited determination of his case. As directed in the above provision, this period ought ideally to be considered.

In our present case, however, the applicant also happens to have been in custody (possibly) or in prison at the same time for a more serious offence of robbery with violence. The question that arises is whether the applicant spent this time in custody only pending trial in this case or in fact because of the other case (the robbery case). It is clear that in this case, the applicant was granted bail on 7.2.2004. It is not shown if he was granted bail in the robbery case. If he was never placed on bail in that case, then it would be safe to conclude that he remained in custody more because of the other case than on this present case. There is also the possibility that the drugging on of the other case had a direct bearing with the period that the trial in the lower court took to finalise this matter.

The resultant effect of all this is that the applicant probably remained in custody for a period long enough to consume the better part of the term of imprisonment the court meter out herein. I am not convinced that this is what is intended by section 333(2) of the Criminal procedure Code. That the prison taken in remand custody would translate to be the sentence upon conviction. I find so, particularly, in view of the possibility of the fact that the long period taken in custody could as well have been because of the other case, not this one.

Being convinced that the sentence as meted out by the trial court was lawful, I do not find any merit in this application seeking revision of the same so as to give consideration to the period the applicant spent in custody pending determination of this case. I therefore decline to issue the orders sought. The application of the applicant filed herein on 9.3.2020 is accordingly dismissed.

**OGEMBO D**

**JUDGE**

**29.5.2020**

Court:

Ruling read out in court in presence of the applicant and Ms. Kimaru for the state.

**OGEMBO D**

**JUDGE**

**29.5.2020**