



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KERUGOYA**

**CRIMINAL REVISION NO. 156 OF 2020**

**SABINA NJERI WANYOIKE.....APPLICANT**

**– VS –**

**REPUBLIC.....PROSECUTOR**

**RULING**

***(From original conviction and sentence in HCCR Case No. 15 of 2014 of the High Court at Kerugoya).***

**RULING**

1. The application before me seeks review and is slated to be a petition under **Article 50(2) Q of the Constitution**. She is urging this court to consider that the long period that she spent in remand was not taken into consideration by the trial Judge when sentencing her. That she was in remand awaiting trial for a period of one year and nine months. It is her contention that she was discriminated since other convicts are enjoying the benefits of having the period of time they served in remand pending trial considered. The applicant has urged the court to exercise its jurisdiction to review the sentence and consider the period that she was in remand.

2. The application is supported by the affidavit of the applicant where she deposes that she was arrested on 29/6/2014 and charged with the offence of murder vide criminal case No. 15/2014. Plea was taken on 2/7/2014 and she was imprisoned on 16/3/16. That the period she had stayed in the remand was not considered.

3. The State, represented by Mr. Ashimosi did not oppose the application.

4. I have considered the application. This is a simple application based on a pure point of law. From the record, the offence was committed on 29/6/14. She was arraigned in court on 18/7/14. The applicant was remanded in custody on 16/3/2016 when she was sentenced to serve Eight years imprisonment. The period she was in custody was not considered when passing sentence.

**Article 50(2)Q of the Constitution** states that:-

***“Every accused person has the right to a fair trial which includes –***

***If convicted, to appeal, or apply for review by, a higher court as prescribed by the law.”***

5. The applicant has alleged violation of her right as she was discriminated. **Article 23(1) of the Constitution** gives High Court jurisdiction to entertain applications for redress of denial or infringement of rights. The Article provides:-

***“The High Court has jurisdiction in accordance with Article 165, to hear and determine applications for redress of a denial. Violation or infringement of, or threat to, a right or fundamental freedom in the bill of rights.”***

6. Sentencing of an accused person is a matter of a right to a fair trial. Under the Constitution, the right to fair trial is one of the rights which cannot be limited, see **Article 25 of the Constitution**.

**Section 333 (1) & (2) of the Criminal Procedure Code** provides in Mandatory terms that when a person is convicted, any period spent in custody prior to sentencing shall be taken into consideration. The Section provides:-

***“(1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.***

***(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 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.”***

7. The applicant was entitled to have the period that she had spent in remand considered when passing sentence. This was not done. The State conceded the application. I find that the application has merits. I order that the sentence imposed on the appellant shall be reviewed and substituted with an order that the sentence of Eight years shall be computed from 18/7/2014 when she was arraigned in court and remanded in custody.

**Dated at Kerugoya this 30<sup>th</sup> day July 2020.**

**L. W. GITARI**

**JUDGE**