

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

CONSTITUTIONAL PETITION NO. 23 OF 2020

ALI KAHINDI KIBUTA.....PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

Coram: Hon. Justice R. Nyakundi

Petitioner in person

Mr. Alenga for the state

RULING

This is a petition by the convict **Kahindi Kibuta** initially charged, tried and convicted for the offence of burglary and stealing contrary to Section 304 as read with Section 279 of the Penal Code. At the end of it all the trial Magistrate sentenced him to serve five years imprisonment.

In the chamber summons filed in Court on 21.8.2020 he now seeks revision of sentence on grounds that during the order there was an oversight by the Court of not factoring the two year period spent in remand custody.

Determination

The Law

It is provided for under Section 362 of the Criminal Procedure Code that: *“The High Court may call for and examine the record of any magistrate’s Court for the purpose of satisfying itself as to the correctness, legality and profusely of any finding, sentence or order recorded or passed and as the regularity of any proceedings of the subordinate Court. These provisions therefore gives the High Court power to exercise the power of revision on any other proceedings before the subordinate Courts.”*

To that extent I have perused the record and I note that the Learned trial Magistrate while imposing sentence failed to give credit to the applicant for the two years he spent in remand custody pending trial and conclusion of the case.

For purposes of giving effect to Section 333 (2) of the Criminal Procedure Code the applicant shall be credited with the two years period spent while in remand custody. In the result, I find merit in the revision which I accordingly allow by granting the order.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF DECEMBER 2020

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R. NYAKUNDI

JUDGE