



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KABARNET

HCCRA NO. 120 OF 2017

(FORMERLY ELDORET HCCRA NO.66 OF 2013)

BUNDOTICH KIPRONO.....APPELLANT

=VERSUS=

REPUBLIC.....RESPONDENT

[An appeal from the original conviction and sentence of the Principal Magistrate's Court at Eldama Ravine Cr. Case no. 485 of 2011 delivered on the 21st day of March, 2013 by Hon. M. Ochieng, Ag. SRM]

RULING

1. Despite Judgment dated 8/4/2019 herein directing that the appellant be released from custody upon successful appeal, the prison authority have failed to comply with the order of the Court citing a 2 year sentence in a criminal case on a charge of attempted escape by appellant.
2. At paragraphs 16 and 42 of the said Judgment herein, this Court held that the said trial was a nullity for breaching the appellant's statutory right as a child accused to legal representation under section 186 of the Children Act as follows:

Conviction for attempted escape Cr. Case No. 520/12

16. As a consequence, the appellant's trial for attempted escape in Eldama Ravine PMCr. Case No. 520 of 2012 for which he is charged, convicted and sentenced on 5/6/12 was a nullity as he was not shown to have been represented the trial in which he pleaded guilty and was convicted on plea of guilty. See proceedings in the Record of Appeal for 5/6/12 and 22/3/13.

42. In terms of section 333 (2) proviso of the Criminal Procedure Code that requires the Court when considering on imprisonment sentence to take into account such period as the person has been in detention awaiting trial, the sentence of imprisonment to be imposed on the appellant will be reckoned from the date of arrest on 23/5/2012. The appellant was convicted and sentenced to imprisonment for 2 years for attempted escape from lawful custody in proceedings, which this Court has found a nullity because of breach of the appellant's right to legal representation as a child accused of having infringed any law pursuant to section 186 (b) of the Children Act.

The period of pre-trial detention runs from the date of his arrest and remand awaiting his trial from the charge herein.

Orders

3. Consequently, it is now clarified and directed that the appellant has no criminal responsibility and or punishment for any charge of escape or attempted escape in the said criminal case, which this Court had already declared a nullity.
4. The appellant having lodged a successful appeal in this case is entitled to an order, which was thereby given in the Judgment of 8/4/2019, for his immediate release from custody where he has been held on account of the two cases, Eldama Ravine Criminal case no. 520 of 2012 and Eldama Ravine Criminal Case no. 485 of 2012.

Order accordingly.

DATED AND DELIVERED THIS 24TH DAY OF JUNE 2019

EDWARD M. MURIITHI

JUDGE

Appearances:

M/S Arusei & Co. Advocates for the appellant.

Ms. Macharia, Ass. DPP for the Respondent