



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MACHAKOS**

**CRIMINAL MISCELLANEOUS APPL. NO. 87 OF 2019**

**ABED MUTISO MULILI.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The accused **Abed Mutiso Mulili** had initially been charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal code. However, the accused later engaged the state for a plea bargain which was duly accepted and he was subsequently charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal code. The particulars are that on the 7<sup>th</sup> day of December, 2014 at kwa Mukeka shopping Centre in Mumbuni location, Machakos Sub-County within Machakos County unlawfully killed **Amos Kangethe Paul**.

2. The accused pleaded guilty to the said charge of manslaughter. The court called for a pre-sentence report and thereafter sentenced him to serve five (5) years imprisonment.

3. The accused has now moved this court pursuant to the provisions of Section 333 (2) of the Criminal Procedure Code and urges this court to order that the sentence of five years do commence from the date of arrest namely 7/12/2014.

4. The application was not opposed by the state. Mr. Machogu, Learned Counsel for the prosecution conceded to the said application and submitted that the accused had been charged on 15/12/2015 but was unable to raise a surety and thus remained in remand custody until 8/12/2017 when he was sentenced. He submitted that the court should consider the period spent in custody.

5. I have considered the application and the oral submissions presented. The Applicant has mainly hinged his application under Section 333(2) of the Criminal Procedure Code which states as follows:-

***“(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 sub-section

***(1) Has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”***

6. The Applicant vide his application indicated that he was arrested on 7/12/2014. This was confirmed by the investigating officer vide an affidavit filed in court on the 9/12/2014. The court record indicates that the Applicant was arraigned in court on the 15/12/2014. Even though an order for the release of the Applicant on bond was granted, the Applicant did not manage to post a surety and he thus remained in custody all through until he was sentenced on the 8/12/2017.

7. As the Applicant had been in remand custody from the 7/12/2014 to the date of sentence namely 8/12/2017, I find that the request brought pursuant to the provisions of Section 333(2) of the Criminal Procedure Code has merit. The Applicant ought to be allowed to benefit from the aforesaid provision.

8. Accordingly, I find that the computation of five years to which the Applicant was sentenced on the 8/12/2017 shall run from the 7/12/2014 when he was arrested since there is evidence that he remained in custody during the entire period of the trial. The sentence of 5 years is now revised and which should now run from the 7<sup>th</sup> December, 2014. Under the provisions of Section 46 of the Prisons Act the Applicant is entitled to remission of sentence to the tune of a third of the whole sentence. No evidence has been tendered to the effect that the Applicant’s conduct while in prison has been put to question. Consequently I find the period so far spent in prison to be commensurate with the sentence imposed and which I now find has been fully served. The Applicant is hereby ordered to be set at liberty forthwith unless otherwise lawfully held.

It is so ordered.

**Dated and delivered of Machakos this 25<sup>th</sup> day of July, 2019.**

**D.K. Kemei**

**Judge**