



**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MILIMANI**

**CRIMINAL DIVISION**

**MISC. CR. APPLICATION NO. 14 OF 2019**

**CHRISTOPHER OTIENO ONYANGO.....APPLICANT**

**VERSUS**

**REPUBLIC..... RESPONDENT**

**RULING**

1. The Applicant was charged with robbery with violence and was subsequently convicted and sentenced to serve six years imprisonment. The sentence was passed on 4<sup>th</sup> April, 2017. He did not appeal on the sentence or conviction.
2. Before this court is a Notice of Motion application filed on 24<sup>th</sup> January, 2019. It seeks a review of the sentence, basically urging that the period he was in remand custody be taken to constitute part of the sentence.
3. Under Section 333(2) of the Criminal Procedure Code, the court is called upon to take into account the period an accused was in remand custody prior to sentencing. In the instant case, the learned trial magistrate failed to observe this guideline which implies that the Applicant will be in custody for a longer period than the sentence.
4. Consequently, the application herein must succeed. I order that the sentence starts running from 3<sup>rd</sup> March, 2016, the date of the Applicant's arrest.

**Dated and Delivered at Nairobi This 30<sup>th</sup> September, 2019.**

**G.W.NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. *Applicant present in person*
2. *Mr. Momanyi for the Respondent*