

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC CRIMINAL APPLIC NO. 62 OF 2018

ELIZABETH MWIYATHI SYEGO.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant was charged and convicted with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. She was sentenced to death and later was resented by this court to 20 years imprisonment to run from the date of sentencing namely 29th April, 2009. She has now approached this court for review of sentence under section 333(2) of the Criminal Procedure Code.
2. The state opposed the application and stated that the court is functus officio.
3. The application was disposed of by way of oral submissions and the appellant submitted that her application should be allowed as the court ought to take into consideration the time she spent in custody before conviction.
4. Mr. Cliff Machogu, prosecution Counsel, opposed the application and relied on his grounds of opposition.
5. The issue for determination is whether the court may grant the orders sought.
6. The prayer sought is governed by Section 333 (2) of the Criminal Procedure Code that states:

“(2) Subject to the provisions of section 38 of the Penal Code (Cap. 63) 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. It is the considered opinion of the court having had due regard to Section 333 (2) of the Criminal Procedure Code that the appellant's application is meritorious. Even though this court had resented the applicant the nature of the application is one seeking a review of the sentence. The review sought only relates to the date when the applicant was arrested which period is needed for purposes of section 333(2) of the Criminal Procedure Code. I find this court has jurisdiction to accept the request for review and to entertain it. In any event it is not disputed that the applicant remained in custody throughout the trial and she is entitled to approach this court as the sentencing court for relief provided under section 333(2) of the Criminal Procedure Code. In any event the applicant has indicated that she is satisfied with the resentence and does not intend to appeal against it save only that she wants the same to commence from the date of arrest. This court in correcting the issue of the date of arrest does not amount to sitting on appeal. The review sought only targets a small speck in the sentence earlier meted on the applicant during resentencing. It is not disputed by the respondent that the applicant was in custody the entire period of the trial and hence she is entitled to benefit under section 333(2) of the Criminal Procedure Code. In the circumstances the respondent's objection lacks merit.
8. Accordingly, this court finds that the computation of twenty (20) years that the appellant was resented to shall run from the date when the Appellant was arrested namely 20th July 2001 as she remained in custody during the entire period of his trial.

It is so ordered.

Dated and delivered at Machakos this 30th day of September, 2019.

D. K. Kemei

Judge