

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

MISC CRIMINAL APP. NO. 12 OF 2019

BENSON MUTUA MWANZIA.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Appellant was charged and convicted with the offence of attempted murder contrary to Section 222(a) of the Penal Code Act. He was sentenced to seven years imprisonment by the trial court and later appealed to this court which appeal was unsuccessful.
2. He then filed the instant application seeking that the period he spent in custody should be considered.
3. Mr. Cliff Machogu, prosecution Counsel, did not oppose the request that the period spent in custody be considered.
4. The issue for determination is whether the court may review the sentence.
5. Section 333 (2) of the Criminal Procedure Code 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.”

6. It is the considered opinion of this court having had due regard to Section 333 (2) of the Criminal Procedure Code that the request by the applicant has merit. Accordingly, this court finds that the computation of seven (7) years that the applicant was sentenced to is hereby reduced by a period of 2 years 11 months and 10 days that he was in remand custody so that the remainder of the period of sentence will commence from the date of sentence namely 31.7.2017.

It is so ordered.

Dated and delivered at Machakos this 29th day of October, 2019.

D. K. Kemei

Judge