



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL DIVISION**

**CRIMINAL REVISION NUMBER 450 OF 2016**

**MORRIS KARUGA WANJIRU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

Morris Karuga Wanjiru, herein the Applicant, filed the present application on 15<sup>th</sup> December, 2016. He sought to have his sentence reviewed. The Applicant was convicted on 24<sup>th</sup> November, 2014 of committing the offence of manslaughter. The conviction was based on his own plea of guilty and he was subsequently sentenced to eight years imprisonment.

He urged the court to consider the time he served in remand as constituting a part of the sentence. He told the court that he had learned life support skills in prison which would aid him in earning a living after his release from prison. He also urged the court to consider the fact that his advocate was not accorded an opportunity to mitigate. The Respondent was represented by learned State Counsel, Ms. Akunja who submitted that the trial court had considered the circumstances of the case including the fact that the deceased was a girlfriend of the Applicant. Further, that the sentence was lenient in that the offence carries a maximum of life imprisonment. In that case, she urged the court not to vary the sentence.

The Applicant was first arraigned in court on 20<sup>th</sup> January, 2009 under a charge of murder. He was never admitted to bond and the trial proceeded until 24<sup>th</sup> November, 2014 when the charge sheet was substituted with one of manslaughter. He pleaded guilty to the new charge and was sentenced to the eight years imprisonment. The record of proceedings shows that the Applicant's mitigation was taken into account before that sentence was passed. However, the court did not consider the time the Applicant had spent in remand before passing the sentence as required under Section 333(2) of the Criminal Procedure Code and Section 7.10 of the Sentencing Policy Guidelines. Thus, taking into consideration the latter the Applicant has served his sentence.

In the end, the application succeeds. I set aside the remainder of the sentence and order that the Applicant be forthwith set free unless otherwise lawfully held.

***Dated and Delivered at Nairobi This 16<sup>th</sup> October, 2017.***

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of;**

- 1. Applicant in person.*
- 2. M/s Sigei for the respondent.*