

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
CRIMINAL REVISION NUMBER 29 OF 2017
JOHN MUTUA MUNYAO.....APPLICANT
VERSUS
REPUBLIC.....RESPONDENT
RULING

By a Notice of Motion filed on 18th July, 2017 by the Applicant in person, he prays for the revision of the sentence he is currently serving by reducing the same by the number of days he spent in custody. He was charged with the offence of robbery with violence contrary to **Section 296(2) of the Penal Code** with an alternative count of handling stolen goods contrary to **Section 322(2) of the Penal Code**. He was found guilty for the alternative charge and was sentenced to serve four years imprisonment. The same was passed on 23rd November, 2016.

A perusal of the original record of proceedings confirms that he was in remand throughout the period of the entire trial. He took plea on 25th January, 2013. He was therefore in remand for a period of three years, ten months. As at date, he has served the sentence for exactly one year. Cumulatively therefore, he has been in remand for a period of four years ten months. This notwithstanding, I take into account the circumstances of the offence which were grave. He was found in possession of 878 laptops for which he could not explain how he came by their possession. Furthermore, the offence which he was convicted for is a felony which carries a sentence of up to 14 years imprisonment. Therefore, although he had spent the three years and ten months in custody before the sentence was passed, it is my view that he must serve a minimum of two years before his sentence can be revised. After all, Section 333(2) of the Criminal Procedure Code does not make it mandatory that the period spent in custody must be reduced from the sentence. Each case depends on its circumstances. In the circumstances, the application fails and the same is dismissed.

Dated and Delivered at Nairobi This 22nd November, 2017.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. *Applicant present in person.*
2. M/s Nyauncho for the Respondent.