



**Otieno v Republic (Revision Case E003 of 2024)
[2025] KEHC 704 (KLR) (Crim) (22 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 704 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
REVISION CASE E003 OF 2024
AM MUTETI, J
JANUARY 22, 2025**

BETWEEN

SAMUEL ODONGO OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has moved this court by way of revision seeking to have this court consider varying the learned Honorable Magistrate's decision on sentence the application is expressed to be brought under Sections 333 of the [Criminal Procedure Code](#) as read together with 362 of the [Criminal Procedure Code](#).
2. The applicant contends that he was arrested on 4th July 2017 and remained in custody until 7th of April 2022 when he was convicted and sentenced.
3. Upon conviction he was sentenced to serve the following sentences:-Count I for stealing from the person contrary to section 279(a) of the [Penal Code](#), to serve 3years imprisonment.Count II for stealing from the person contrary to section 279(a) of the [Penal Code](#), to serve 3years imprisonment.Count III for being in possession of imitation firearm contrary to section 34(1) of the [Firearms Act](#) Cap 114, to serve 7years imprisonment.possession of ammunition without a valid firearm certificate contrary to section 4(2) (a) and section 4 (3) (b) of the [Firearms Act](#), to serve 5years imprisonment.
4. The applicant has urged this court to consider that the maximum period of imprisonment imposed upon him was 7 Years and that the same was to run concurrently with the rest of the sentences.
5. According to the applicant, the learned Honorable magistrate ought to have given him credit for the period spend in custody between 4th July 2017 and 31st March 2022 when the sentence was pronounced.



6. At the hearing of the application, counsel for the state did not oppose the application and simply urged the court to exercise its discretion as per the law.
7. I have carefully perused the record and noted that the learned Honorable magistrate in sentencing the accused made no reference to the period spent in custody by the applicant prior to the conviction and sentence.
8. Section 333 of the [Criminal Procedure Code](#) provides:-

“Warrant in case of sentence of imprisonment

1. A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.
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.”(emphasis mine).
9. The section imposes a duty upon the court in sentencing an accused person to ensure that the period spent in his custody during trial is taken into account in computing the sentence to be served.
10. The learned Honorable magistrate in sentencing the accused did not give effect to the express provisions of Section 333 of the [Criminal Procedure Code](#) therefore the sentence of 7 years imposed upon the applicant though legal was irregular to the extent that the court did not indicate that it would run from the date of arrest and incarceration.
11. The irregularity in sentencing therefore invites the exercise of the revisionary jurisdiction of this court under Section 362 of the [Criminal Procedure Code](#) and as a consequence therefore this court hereby determines that the 7 year period should be computed from the date of 4th July 2017 when the accused person was arrested.
12. In the end if by the time of rendering this ruling the period of 7 years shall have lapsed the applicant shall be immediately released from prison unless otherwise lawfully held.
13. It is so ordered.

DATED, SIGNED AND DELIVERED IN VIRTUAL COURT AT NAIROBI THIS 22ND DAY OF JANUARY 2025.

A. M. MUTETI

JUDGE

In the presence of:

Kiptoo: Court Assistant

In person for the Applicant

Ms Ogega for the Respondent

