



**Ongondo v Republic (Miscellaneous Criminal Application  
E033 of 2024) [2025] KEHC 4551 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4551 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
MISCELLANEOUS CRIMINAL APPLICATION E033 OF 2024**

**WA OKWANY, J**

**APRIL 3, 2025**

**BETWEEN**

**CLINTON ONGONDO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was convicted, on his own plea of guilty, for the offence of burglary contrary to Section 304 (2) and Stealing contrary to Section 279 (b) of the *Penal Code* in Keroka PMCC E249 of 2023. He was, upon conviction, sentenced to serve 5 years' imprisonment.
2. The Applicant subsequently sought a revision of his sentence through the Prison Decongestion Initiative conducted on 26<sup>th</sup> March 2024, but his quest was unsuccessful as the Sentence Review Report did not favour his early release on probation.
3. The Applicant has now filed the instant application seeking a reduction of his sentence. The Application is supported by his sworn affidavit and is premised on the following grounds: -
  1. That he pleaded guilty to the charges and maintains the same.
  2. That he was not against the judgment or conviction but only prays for leniency to have his sentence reduced to a less severe sentence which embraces the possibility of rehabilitation.
  3. That he was remorseful and regretted his involvement and commitment of the offence hence pleaded with the Court to treat him with the least prescribed punishment as he was not a criminal back in the community.
  4. That since his arrest and conviction, he has learned a lot in the ways that would not lead him to his crime or break the law and he promised not to repeat the offence.



5. That he was the breadwinner of his small family which was very poor and has suffered since his arrest and conviction.
6. That the honourable Court be pleased to have mercy on him and consider his Application for sentence reduction in order to allow him to rearrange his life again.
4. When the matter came for hearing on on 18th February 2025, Mr. Chirchir, Learned Prosecution Counsel, submitted that the sentence was legal and proper and that the Applicant would benefit from remission. He also pointed out that the Probation Officer's Sentence Review report did not recommend a non-custodial sentence.
5. On his part, the Applicant urged the Court to consider the period that he spent in custody while awaiting his trial and deduct the same from his sentence period.
6. The main issue for my determination is whether the Applicant has made out a case for reduction of sentence.
7. Article 50 of the Constitution stipulates as follows on the rights of an accused person: -
  2. Every accused person has the right to a fair trial, which includes the right-
    - q. if convicted, to appeal to, or to apply for review by a higher court as prescribed by law.
8. This court's powers, on Revision, are premised on Article 165 (1) of the Constitution which states: -
  1. The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial, or quasi-judicial function, but not over a superior court.
9. Section 362 also provides for the High Court's revisionary powers as follows: -
 

362. Power of High Court to call for records

The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
10. Section 364 of the Criminal Procedure Code further outlines the manner in which such powers are to be exercised thus:-
 

364. Powers of High Court on revision

  1. In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
    - a. in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
    - b. in the case of any other order other than an order of acquittal, alter or reverse the order.



2. No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
11. The crux of the present Application is that the Applicant's prayer that the period he spent in custody while awaiting his trial be considered when computing his final sentence. Section 333(2) of the *Criminal Procedure Code* provides thus: -

333. Warrant in case of sentence of imprisonment

  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.
12. The above provisions are further encapsulated in the *Judiciary Sentencing Policy Guidelines* (2016) as follows: -
  - 7.10. The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed.
  - 7.11. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.
13. A perusal of the trial court's record reveals that the trial court only considered the Applicant's mitigation but did not factor in the period that he spent in custody during sentencing. I note that even though the Applicant was not incarcerated for a long time after his arrest owing to the fact that he changed his plea before the matter could go for a full hearing, I still find that his sentence period should have been computed from the date of his arrest.
14. Consequently, I allow the Application and direct that the Applicant's 5 years sentence shall run from the date of his arrest being 24<sup>th</sup> April 2023.
15. It is so ordered.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIRTUALLY VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF APRIL 2025.**

**W. A. OKWANY**

**JUDGE**

