Nafula v Republic (Criminal Revision E331 of 2024)
[2025] KEHC 6136 (KLR) (16 May 2025) (Ruling)

Neutral citation: [2025] KEHC 6136 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT ELDORET

CRIMINAL REVISION E331 OF 2024

RN NYAKUNDI, J

MAY 16, 2025

BETWEEN

EUNICE WATILA NAFULA ..... PETITIONER

AND

REPUBLIC ..... RESPONDENT

RULING

Representation:

Ms. Kirenge for the state.

1. I am called to determine the petitioner's application wherein she seeks reliefs under Section 333(2) of the *Criminal Procedure Code*. The Petitioner seeks that the sentence imposed be revised to reflect the time that she has been in pre-trial custody. She contends that she spent one year in custody before sentencing, which period was not factored in her sentence.

2. The affidavit in support of the application indicates that the Petitioner was convicted and sentenced to serve 15 years' imprisonment for the offence of murder. That she spent 4 years in remand custody whereby 3 years was deducted during sentencing and left behind 1 year which she asks that be factored in. She prays that the provisions of section 333(2) be considered in the sentencing.

3. The cardinal grievance in this application is the session court's non-compliance with section 333(2) of the *Criminal Procedure Code* for not taking into account the period served by the Petitioner of 1 year in pre-trial detention before she was tried, found guilty, and convicted to 15 years' imprisonment. At the time of sentencing, the court is required to impose the sentence prescribed by the statute including the mandatory minimums but I am of the considered view that there is nothing in the same statute that prevents it from then granting credit in consonant with section 333(2) of the *Criminal Procedure Code*. That means that granting credit even where the mandatory sentences are provided for does not undermine parliament's intent in enacting the mandatory minimum sentences. The Kenyan criminal

law is made up of both *the constitution*, the statute and common law principles. The co-existence of this regime in the criminal justice system is a feature of the law of sentencing which has been even codified in the *Criminal Procedure Code* and the fundamental principles of sentencing in the judiciary framework 2022. Therefore, in sentencing framework, there must be an interaction between the penal registration, *the constitution*, the sentencing policy guidelines and the principles of common law. The application of this rule in section 333(2) of the *Criminal Procedure Code* is granted in order to mitigate some of the Constitutional imperatives which may have been violated by virtue of an offender serving pre-trial detention while presumed innocent until the contrary is proved. It is therefore not equivalent to backdating a sentence. The specific context of pre-sentence custody is to ensure adherence to Art. 50 (2) (p) on the right of an accused to be accorded a benefit of the least severe of the prescribed punishment of the offence and if convicted apply for review to a higher court against the prescribed sentence. In this case, the imposition of a custodial sentence without the application of section 333(2) of the *Criminal Procedure Code* is likely to amount to a kind of double punishment contrary to the most fundamental requirements of justice and fairness. Conscious of this fact and the provisions of the law, there is no merit in the application for this court to exercise discretion to give credit for Hon. Justice Githinji took into account the period of 3 years spent in Remand Custody. There is no sufficient cause for the Applicant to re-litigate the issue on pre-trial detention. This was fully considered by this court on 4.12.2019. For avoidance of doubt the court pronounced itself as follows: "In making and effort to be lenient, I will only reduce the three years spent in custody from the agreed proposal of 15 years and sentence the Accused to 12 years imprisonment. The is therefor an error on the face of the record on the ruling of this court dated 4.4.2025 purporting to sit on Appeal over the decision of the court with concurrent jurisdiction. This court exercises inherent jurisdiction to correct an error of law on the face of the record. The earlier application did not meet the threshold of Section 333(2) of the C.P.C. Essentially it was res-judicata

4. It is so ordered.

SIGNED, DATED AND AMENDED AT ELDORET THIS 16TH DAY OF MAY 2025

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R.NYAKUNDI

JUDGE