



REPUBLIC OF KENYA



KENYA LAW
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**Nganga v Republic (Criminal Revision E301 of 2024)
[2025] KEHC 5939 (KLR) (9 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 5939 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E301 OF 2024**

A MSHILA, J

MAY 9, 2025

BETWEEN

PATRICK KAMAU NGANGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the Applicant was charged with the offence of Rape contrary to Section 3(1)(a)(b) as read with Section 3(3) of the *Sexual Offences Act*.
2. The Applicant was convicted and sentenced to serve a term of Ten (10) years imprisonment; Being aggrieved with the trial court's omission to deduct the period spent in remand from the date of his arrest the Applicant lodged this application seeking that he be allowed to benefit from the provisions of Section 333(2) of the *Criminal Procedure Code*.
3. At the hearing hereof, the Applicant was unrepresented whereas the Respondent was represented by Prosecuting Counsel Mr. Gacharia. Both parties made oral submissions. Hereunder are the parties respective submissions;

Applicants' Case

4. The Applicant sought for revision of sentence under the provisions of Section 333(2) of the *Criminal Procedure Code*; that the trial Court failed to apply the aforesaid section and ought to have backdated the commencement date to the day of his arrest which was 4/11/2017.
5. To support his prayer for revision of the commencement date of the sentence the Applicant relied on the Charge Sheet and the Ruling on Sentence dated 30th January, 2019.



6. The Applicant prayed that in balancing mercy and justice his sentence be revised to commence effectively from the aforementioned date of arrest;

Respondent's Case

7. In response Prosecuting Counsel for the State confirmed that the sentence was silent on the commencement date, and was not opposed to the prayer for the revision of the date to commence from the date of the Applicants arrest.

Issues for Determination

8. After hearing the oral submissions this court has framed only one issue for determination which is as follows;
 - i. Whether to consider the date of arrest as the commencement date of the sentence.

Analysis

Whether to consider the date of arrest as the commencement date of the sentence;

9. The Applicant sought a revision of his sentence; he prayed that the provisions of Section 333(2) be invoked and for an order that the sentence imposed do commence from the date of his arrest.
10. The provisions of Section 333(2) of the *Criminal Procedure Code* reads as follows;

“(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 of which it was pronounced, except where otherwise it is 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”.

11. The court record indicates that on the 6/11/2017 the Applicant was granted very lenient cash bail terms in the sum of Kshs.100,000/- which he did not manage to raise and was remanded throughout the pendency of his trial period.
12. Upon perusal of the trial Courts ruling on sentence this court indeed notes that it is silent on the aspect of the date of arrest as being the commencement date of the sentence. Based on the provision of the Section 333(2) aforesaid this Court is satisfied that the trial court made an error when it did not take into consideration the period that the Applicant had spent in remand from the date of arrest. This court is satisfied that the Applicant is entitled to benefit from the provisions of Section 333(2) of the *Criminal Procedure Code*.
13. The record reflects that the Applicant was arrested on 4th November, 2017 and was convicted on 30th January, 2019. Being unable to meet the conditions for Bond he spent a period of approximately One (1) year and Three (3) months incarcerated. This period shall be deducted from his sentence.

Findings and Determination

14. For the foregoing reasons this court makes the following findings and determinations;



- i. The application is found to be with merit and it is hereby allowed; the sentence shall commence from the date of arrest being 4th November, 2017.
- ii. The period spent in remand be deducted from the term.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 9TH DAY OF MAY, 2025.

HON. A. MSHILA

JUDGE

In the presence of:

Sanja – Court Assistant

Mr. Gacharia for the State

Applicant - present in person at Kiambu Prison.

