



REPUBLIC OF KENYA



KENYA LAW
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**Gachinga v Republic (Criminal Revision E065 of 2025)
[2025] KEHC 10701 (KLR) (21 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10701 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E065 OF 2025
DKN MAGARE, J
JULY 21, 2025**

BETWEEN

BENEDETTE NJOKI GACHINGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over an application dated and filed on 27.2.2025 seeking rehearing of the sentence imposed upon the applicant. The application is supported by the affidavit of the Applicant who deposed in material that the time spent in custody between 25.2.2014 and 19.8.2016 was not taken into consideration and she is serving an excessive sentence.
2. The Applicant also deposed that she was arrested on 25.2.2014 and was in custody for 2 years 6 months after which she was released on bail on 19.8.2016.
3. The sentence was reduced on appeal to 12 years by the Court of Appeal. The said sentence cannot be reviewed or revised. The court's hands are tied in respect to sentences of the superior courts. The only question is for the court to interpret when the sentence was to commence. This is because the judgment in both courts was silent on the commencement date. The Court of Appeal judgment supersedes the judgment of this court, hence the operative judgment and no other.
4. The state conceded that the time in custody is to be taken care of. The only power the court has is not to review or revise the sentence, but to indicate the time it was to commence. Commencement is provided under Section 333 of the *Criminal Procedure Code* as follows:
 - (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.

5. The question in the court is not whether to review or revise but when the sentence commenced. The provisions of section 333 of the *Criminal Procedure Code* are self-executing. Section 333(2) deemed when the sentence commenced and provides for accounting for the period of incarceration before the sentence. Having been deemed to commence and wit accounting for the period in custody, it is not possible to give it any other interpretation other than the deeming of section of section 333. This court will not alter the sentence meted out. It can only indicate that the same commenced on the date of arrest excluding the period when the Applicant was on bond.
6. The court has no power to interfere even with a single day other than to direct the prisons, to take into account the days the applicant was incarcerated before sentencing. The record indicates that the Applicant was arrested on 25.2.2014 and remained in custody until she was released on 19.8.2016 following the order of this court dated 18.7.2016 releasing her on bond. That period is impeded in the judgment and shall be accordingly taken into account. Consequently, the period between 24.2.2014 and 19.8.2016 sums up to 2 years, 5 months and 25 days.

Determination.

7. In the end the court gives the following orders:
- a. The application is unnecessary in view of the provisions of Section 333(2) of the *Criminal Procedure Code*.
 - b. For avoidance of doubt, the sentence meted out remains, only to add that the period between date of arrest and the time of release on bond is deemed to be part of the sentence served, that is, between 24.2.2014 and 19.8.2016, a period of 2 years, 5 months and 25 days.
 - c. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 21ST DAY OF JULY, 2025. RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Applicant present

Mr. Kimani for the State

Court Assistant – Michael

