Kiragu & another v Republic & another (Criminal Revision E319 of 2024) [2025] KEHC 10563 (KLR) (22 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10563 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT MURANG'A

CRIMINAL REVISION E319 OF 2024

TW OUYA, J

JULY 22, 2025

BETWEEN

DICKSON MANG'ARA KIRAGU ..... 1ST APPLICANT

DICKSON MANG'ARA KIRAGU ..... 2ND APPLICANT

AND

REPUBLIC ..... 1ST RESPONDENT

REPUBLIC ..... 2ND RESPONDENT

RULING

1. The applicant, Dickson Mang'ara Kiragu, approached this court vide a Notice of Motion dated the 16th September 2024, seeking a revision of the sentence imposed by the trial court in Kangema Senior Principal Magistrate's court Criminal Case No. E318 of 2041.

2. The application is brought under section 333(2) of the Criminal Procedure code on the basis that the trial court failed in the sentencing to factor in the period that the accused had spent in custody during the pendency of the trial. In his supporting affidavit of even date the Applicant avers that he was arrested on 29th May 2024. From the record, he was sentenced on 14th August 2024. The time spent in remand during the pendency of the trial is therefore computed to two months and 14 days.

3. The applicant was charged with the offence of threatening to kill contrary to section 223(1) of the Penal Code. It is alleged that on the 25th May 2024, at Kaharo Village, Kiambuthia Sub-Location, Kiru Location, Mathioya Sub-County within Murang'a county, wilfully and unlawfully while armed with kitchen knife , threatened to kill Kiragu Mang'ara saying "Nitakuua Leo hakuna mchezo nitakuua"

4. The applicant was convicted on his plea of guilty on 14th August 2024 and sentenced to two (2) years imprisonment.

5. Counsel for the state humbly submitted that it was an error of the trial court to fail factor in the time spent in custody during trial before sentence.

6. Counsel humbly submitted that the same was wrong in law and that the period spent in custody during the pendency of the trial should be factored and subtracted from the sentence meted.

7. I have considered grounds of the application, averments by the Applicant and the state counsel. I wish to start by relying on Section 333 (2) of the Penal Code which provides:

> "Subject to the provisions of Section 38 of the Penal Code 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."

8. The Judiciary Sentencing Policy Guidelines also speak to the issue of the period spent by an accused person in pretrial custody at paragraph 7 thereof 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."

9. In the case of Bethwel Wilson Kibor vs Republic [2009] eKLR, the Court of Appeal held that:

> "By proviso to Section 333(2) of Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years' period that the appellant had been in custody. The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held."

10. The principle that flows from the above precedent and statutory provisions is that the trial court is required to consider the period that an accused person has spent in pre-trial custody during sentencing. In the present case, I note that the Applicant first appeared in court on 3rd January 2021 and stayed in remand custody throughout his trial period. He was sentenced on 11th October 2023. The trail magistrate erred in failing to factor in the period that the accused spent in custody during the pendency of the trial warranting interference by this court.

11. Based on the above, I find that there is a basis for interference with the sentence to the extent that the period amounting to two and nine months referred to here above ought to be subtracted from the 2 years sentence.

12. This application succeeds. The period served in custody during the pendency of the trial from 29th May 2024 to 14th August 2024 is factored in the 2 years sentence.

DATED, SIGNED AND DELIVERED ELECTONICALLY THIS 22ND JULY, 2025.

HON. T. W. Ouya

JUDGE