



**Sadera v Republic (Criminal Petition E001 of 2023)
[2024] KEHC 465 (KLR) (24 January 2024) (Judgment)**

Neutral citation: [2024] KEHC 465 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
CRIMINAL PETITION E001 OF 2023
F GIKONYO, J
JANUARY 24, 2024**

BETWEEN

DOMINIC LEPOSO SADERA PETITIONER

AND

REPUBLIC RESPONDENT

*(Revision from Original Conviction and Sentence in Narok CMCR No. 298 of 2010,
Narok HCCRA No. 13 of 2016, and Narok HC. Misc. Cr. Appl. No. 71 of 2018)*

JUDGMENT

Time Spent in Custody

1. Before the court is an undated application filed on 23/05/2023 in which the petitioner is seeking for the time he spent in custody to be considered in the sentence imposed on him.
2. The application is premised on articles 2, 10, 19(3), 22(1) & (3), 23, 25 (c), 27(1)(2), 28, 29(f), 50(2)(q), 159(1), 160(1), 165(3) (b), 258(1), 259 and sixth schedule (article 262) rule 7(1) of *the Constitution*, section 333(2) of the Criminal Procedure Code, and section 38 of the Penal Code.

Petitioner's Submissions

3. The petitioner orally prayed for section 333(2) of the CPC to be applied and for him to get the benefit of the days he had spent in the remand.

Prosecution's Submissions.

4. Ms. Kerubo, the prosecution counsel, orally urged this court to go through the record and determine the application.



Analysis and Determination

Start Date of Sentence: The Law

5. 'Every sentence shall be deemed to commence from, ... the date on which it was pronounced, except where otherwise provided in this Code.' Section 333(2) of the Criminal Procedure Code.
6. But; 'Provided that where the person...has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.' (ibid proviso thereto).
7. The purport of the proviso to section 333(2) of the CPC is to avoid '...an excessive punishment that is not proportional to the offence committed.'. See explanation in Judiciary Sentencing Policy Guidelines (under clauses 7.10 and 7.11.1).
8. Therefore, section 333(2) of the CPC is a matter of justice and pertains to fair trial. Courts should, therefore, give it real effect in sentencing (Ahamad Abolfathi Mohammed & another v Republic [2018] eKLR, and Bethwel Wilson Kibor v Republic [2009] eKLR).

Relevant facts from the original trial court's file

9. The court has perused the original trial court's file and availed itself of its content.
10. The petitioner herein was convicted of the offence of manslaughter contrary to section 202 of the Penal Code. The maximum penalty provided for manslaughter in section 202 of the Penal Code is life imprisonment.
11. The trial court (Hon T.A. Sitati (RM) in sentencing the petitioner considered the fact that the petitioner was unrepentant, his advanced age- middle-aged greying man and that the attack was totally unprovoked and was extreme, and consequently sentenced the petitioner to 20 years' imprisonment for manslaughter.
12. The petitioner was arraigned in court on 09/03/2010, the petitioner was released on bond on 20/12/2010, and the petitioner was convicted and sentenced on 11/03/2016.
13. The court, however, notes that the sentence of 20 years imprisonment in the circumstances of this case was too lenient. It is only fair and just that it commenced from the date of passing sentence; on 11/03/2016, as provided in law.
14. Section 333(2) of the CPC does not tell how the court should take account of time spent in custody. Thus, the circumstances of the case and the lenient sentence, subsume the benefit granted in the proviso to section 333(2) of the CPC.

Conclusion and Orders

15. In light thereof: -
 - i. The petition is dismissed
 - ii. But, as a matter of clarity, the sentence of 20 years imprisonment imposed upon the petitioner shall commence from the date on which it was pronounced by the trial court, i.e. 11/03/2016.
16. Orders accordingly.
17. Right of appeal explained.



DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 24TH DAY OF JANUARY, 2024.

.....

HON. F. GIKONYO M.

JUDGE

In the presence of:-

- 1. C/A Otolu**
- 2. Petitioner**
- 3. M/s Rakama for DDP**

