



REPUBLIC OF KENYA



**Musyoka v Republic (Criminal Revision E016 of 2023)  
[2024] KEHC 1023 (KLR) (7 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1023 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E016 OF 2023  
GMA DULU, J  
FEBRUARY 7, 2024**

**BETWEEN**

**DANIEL MUSYOKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In this matter, the applicant has asked for review of sentence citing section 333(2) of the [Criminal Procedure Code](#) (Cap.75).
2. He has relied on several decided cases, including the case of [Abamad Abolfathi Mohammed & Another =Versus= Republic](#) (2018) eKLR in which the Court of Appeal stated that the period wherein an accused person is held in custody before sentence, should to be taken into account by the trial court in sentencing.
3. On his part, the Prosecuting Counsel Mr. Sirima, has submitted that the applicant was in custody for 4 months and 24 days during trial, and that the State has no objection to that period being reduced from the prison sentence imposed.
4. I have perused the proceedings of the trial court. During sentencing, the trial Magistrate stated that the court had considered the mitigation of the accused herein (applicant), and that he was a first offender. The court however, did not mention the fact that the accused person had spent time in custody during trial, thus it cannot be said that the court considered that fact in sentencing.
5. I note that the accused person (applicant) was charged in July 2022 and sentenced in December 2022, which was the period highlighted by the Director of Public Prosecutions.
6. In those circumstances therefore, I allow the application herein and review the sentence imposed. I reduce the prison sentence herein by four (4) months and twenty four (24) days. It is so ordered.



**DATED, SIGNED AND DELIVERED THIS 7<sup>TH</sup> DAY OF FEBRUARY 2024 AT VOI IN OPEN COURT.**

**GEORGE DULU**

**JUDGE**

**In the presence of:-**

Alfred/Trizah – Court Assistant

Applicant

Mr. Sirima for State

