



**Sarite & 2 others v Republic (Miscellaneous Criminal Application
E001 of 2023) [2024] KEHC 1164 (KLR) (12 February 2024) (Judgment)**

Neutral citation: [2024] KEHC 1164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAROK
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2023**

F GIKONYO, J

FEBRUARY 12, 2024

BETWEEN

MORE OLE SARITE 1ST APPLICANT

PETER MUGO GATHU 2ND APPLICANT

MUSA IKOLE NKURUMWA 3RD APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from the re-sentence of Hon. W. Juma Chief Magistrate in Narok
Criminal Case No 1138 of 2013 on 01.03.2019 and Narok HCCRA No. 14 of 2019)*

JUDGMENT

Endless Applications for Resentencing

1. Before the court is an undated application filed on 13.02.2023 in which the applicants are seeking for the time spent in custody to be considered in the sentence imposed on them.
2. The applicants contend that they were in remand custody the whole period between 02.09.2013 to 08.08.2014 and between 05.11.2015 to 04.08.2017. they argued that they were never released on bond.

The applicants' Submissions

3. The 1st applicant orally prayed for consideration of time spent in custody. He stated that it was only him and the 3rd applicant who were sentenced to 20 years after resentencing.



Prosecution's Submissions.

4. Ms. Mwaniki prosecution counsel orally urged this court to peruse the file and determine the applicants' request.

Analysis and Determination

Original record of trial court

5. The court has perused the original trial court's file and availed itself of its content for purposes of determining whether time spent in custody before the sentence herein was taken account of by the trial court.
6. A brief history of this matter.
7. The applicants herein were charged with two counts of robbery with violence contrary to Section 296(2) of the *Penal Code*. Peter Mugo Mathu faced an alternative count of handling stolen goods contrary to Section 322(1) as read with Section 322(2) of the *Penal Code*. They were charged in Narok Chief Magistrate Case No 1138 of 2013. They were tried before (Hon TA Sitati (SRM) Peter Mugo Mathu was acquitted while More Ole Sarite and Musa Ikote Nkurruna were found guilty and convicted on the first count. On the 2nd count, More Ole Sarite and Musa Ikote Nkurruna were acquitted while Peter Mugo Mathu was found guilty and convicted. They were sentenced to death.
8. The 1st and 3rd applicants being dissatisfied with the sentence by the trial court appealed to the High Court at Naivasha individually. The three appeals were consolidated. The court quashed the conviction of More Ole Sairite and Musa Ikote Nkurruna on the first count. The court upheld the conviction and sentence of Peter Mugo Mathu. The court ordered a retrial on the 1st count for More Ole Sarite and Musa Ikote Nkurruna before a different magistrate at Narok. see *Peter Mugo Mathu & 2 others v Republic* [2015 eKLR.
9. The re-trial commenced before the Hon W Juma and on 04.08. 2017 she found them guilty and sentenced the two to death.
10. The 1st and 3rd applicants herein dissatisfied with the decision appealed to this court. Their appeals were consolidated. Bwonwong'a J found that the two were correctly convicted but quashed the sentence of death passed and ordered for re-sentence hearing before the trial court in accordance with the supreme court decision in the Francis Muruatetu case.
11. The resentencing hearing was conducted by the trial court and the two were sentenced to 20 years.
12. The 1st applicant filed an application seeking leave to appeal out of time. This court considered the application and observed that the appellant's appeal touched on the legality and propriety of the sentence passed by the trial court in re-sentencing. See *More Ole Sarite v Republic* [2021 eKLR.
13. The 1st applicant filed an appeal seeking time spent in custody to be considered. On 27.11.2022 this court (Hon. Gikonyo J) delivered its judgment and stated as follows in respect of time spent in custody. See *Ole Sarite v Republic* (Criminal Appeal 14 of 2019) [2022] KEHC 14954 (KLR) (7 November 2022) (Judgment)

Of Time Spent in Custody

30. The trial magistrate was also categorical that the accused had not served jail for 2 years and their appeal was through. The trial magistrate had in mind the time spent in custody. A



holistic consideration of this matter is that given the nature and commission of the offence, the severe penalty prescribed- read death- and the pronouncements by the magistrate, the 20 years' imprisonment was quite lenient and took account of Section 333(2) of the CPC. I, therefore, find not any violation of his right. Except, however, for clarity and interest of justice, the sentence herein shall run from the date of conviction upon re-trial i.e. August 4, 2017. It is so ordered.

14. The 3rd applicant filed an application seeking resentencing and consideration of time spent in custody. See [Musa Ikote Nkuruna v Republic](#) [2021] eKLR and the court found that: -

(8) In this case, the maximum sentence is death for the offence of robbery with violence. I do note also that the trial court considered the judicial decisions cited by the applicants, the applicant's mitigation and the time spent in jail at the time. She also considered the gravity of the offence and stated that: -

In my view a custodial sentence is the best in the circumstances because I have no basis of treating that robbery as a petty theft case.”

(9) From the sentence ruling, the trial court took into account the totality of all the circumstances of the case. Therefore, a sentence of 20 years' imprisonment in the circumstances of this case is neither excessive nor harsh.

(9) In the upshot, the undated Notice of Motion filed herein for review of sentence lacks merit and is dismissed. For clarity, with this decision, the other applications filed by the applicant vide Narok Misc Criminal App No 48 of 2018 and Narok Criminal App No 15 of 2019 are spent. It is so ordered.

Abuse of process

15. Following the Muruatetu decisional law, Courts received a plethora of applications for resentencing by inmates. Some were merited. Others were multiple, purely contrived to abuse the process of the court. Courts have lamented of the fragrant abuse of the process of the court in the name of resentencing. Every time the court encounters such an application as this, rings high a work of the court in [Baragoi Rotiken v R](#) [2022] eKLR on the state of affairs in court following Muruatetu decisional law.

16. But, now the great flood of resentencing applications is coming inland with dangerous debris. Inmates are using resentencing to abuse the process of the court and defeat the course of justice.

17. It is time signage is erected:

‘Liberal access to justice does not mean access to chaos and indiscipline’

(Supreme Court of India in *D Nyandeo Sabaji Nail and Another v Mrs. Pranya Prakash Khadekar and others* (Petition Nos. 25331-33 of 2015, Dr D Y Chandrachud J).

18. The applicants herein have filed several applications before this court seeking time spent in custody to be considered. The application herein is, therefore, utter abuse of the court process.

19. And, as Dr D Y Chandrachud J (*supra*) warned: -

‘This Court must view with disfavour any attempt by a litigant to abuse the process. The sanctity of the judicial process will be seriously eroded if such attempts are not dealt with firmly.’



20. The application herein is dismissed.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 12TH DAY OF FEBRUARY, 2024.

F. GIKONYO M.

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JUDGE

In the presence of:

1. Court Assistant – Otoro
2. Appellants – Present
3. M/s Rakama - Present

