



**Chepyegon v Republic (Criminal Miscellaneous Application  
E053 of 2023) [2024] KEHC 2370 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2370 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KABARNET  
CRIMINAL MISCELLANEOUS APPLICATION E053 OF 2023**

**RB NGETICH, J**

**MARCH 5, 2024**

**BETWEEN**

**JOSEPH KIPTOO CHEPYEGON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged with the offence of injuring animals contrary to section 338 of the [Penal Code](#). The particulars were that the accused on the 1<sup>st</sup> day of September, 2022 at Kabarkebo village in Kipsaraman Division within Baringo North Sub- County, Baringo County willfully and unlawfully killed an animal capable of being stolen namely a sheep valued at Kshs.4,000/= the property of Chepyegon Cherop.
2. The accused pleaded not guilty to the charge and the matter was set down for hearing with the prosecution availing 3 witnesses to prove the charge against the accused. Upon the closure of the prosecution's case, the court found that a prima facie case had been established against the accused and he was placed on his defence.
3. By judgment delivered on June 29, 2023, the applicant was found guilty and convicted for the offence charged and on the 13th July,2023, the applicant was sentenced accused to serve 3 (three) years imprisonment.
4. The applicant filed this application seeking to have period served in remand computed in the sentence imposed and he be placed on a non-custodial sentence for the remaining part of the sentence.
5. The court called for social inquiry report and from the report, the applicant trained in Motor Vehicle Mechanics after doing KCSE. He was later employed as security guard by Lavington security up to the year 2019 before joining G4S where he worked until 2021 when he lost his job due to alcoholism and



- smoking bhang. He went back home in the year 2021 on ground that he was suffering from depression; while at home, he engaged in petty theft so as to fund his habit of smoking bhang and alcoholism.
6. Prison record show history of mental illness; that he was diagnosed with schizophrenia in the past, and is currently suffering from depression and psychosis attributed to alcoholism and smoking of bhang. He also has high acidity and is on special diet while in prison.
  7. The area assistant chief who is the applicant's neighbor confirmed history of petty crimes against the applicant which has resulted in his mother going into depression and the challenge in applicant's being released is the father who is not willing to accept him back and Applicant's his wife left due to violence from the applicant
  8. The applicant says he has spent 11 months in remand and has learnt the importance of abiding by the law and he also understands his health and the importance of taking medication and wishes to unite with his children.
  9. The victim is the applicant's father. He said the applicant is troublesome at home and his behavior led to the inmate's mother developing stress and depression. He said the applicant's mother passed on about 2 months ago and the family had a discussion and he he is still not ready to accept the applicant as he is the reason the mother died. He is still bitter towards the applicant.
  10. The siblings of the applicant said if released, the applicant will go and live with their father who is currently not willing to accept him back at home. They agree with the father and in their view, the accused should complete sentence in prison.

### **Determination**

11. I have considered sentiments from the applicant's family, the local administration. I have also considered the fact that the applicant is sickly and on medication. In view of the applicant's medical condition, it would have been proper for the applicant to serve the remaining sentence while out of prison but the challenge is, none of the family members more so the father who is the victim herein is not ready to accept him at home. They all blame the applicant for the death of their mother who developed depression and died about two months at the time social inquiry report was prepared by probation officer. There is no mention of alternative place of abode for the applicant. Further, in view of the fact that he has mental illness, he would need support of his family while out of prison but they are not willing to accept him back. In view of the above, it would be safe for applicant to complete sentence while in prison.
12. On period served in remand being considered section 333 (2) is in the following terms:

“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.”
13. The above provision has been the subject of interpretation by both the High Court and the Court of Appeal. In *Abamad Abolfathi Mohammed & another v Republic*, [2018] eKLR, the Court of Appeal when dealing with an appeal in which the High Court was faulted for, inter alia, substituting the



sentence imposed on the appellants by the trial court and ordering that it shall take effect from the date of conviction by the trial court, the court stated as follows:-

“By dint of section 333 (2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. .... We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19<sup>th</sup> June 2012.”

14. Trial court record show that the applicant was in remand for 11 months. The period was not reduced from sentence. In view of section 333(2) of the Criminal Procedure Code, the applicant is entitled to have period served in remand computed in sentence.

#### **Final Orders**

1. I decline to revise sentence.
2. Period served in remand to be computed in sentence imposed by trial court.

**RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2024.**

.....  
**RACHEL NGETICH**

**JUDGE**

**In the presence of:**

Elvis – Court Assistant.

Ms Ratemo for State.

Applicant present.

