



Njogu v Republic (Criminal Case 88 of 2014) [2024] KEHC 2481 (KLR) (6 March 2024) (Ruling)

Neutral citation: [2024] KEHC 2481 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE 88 OF 2014
SM MOHOCHI, J
MARCH 6, 2024**

BETWEEN

DAVID NJOROGE NJOGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted and sentenced to 20 years’ imprisonment for the offence of murder in Nakuru Criminal Case No. 88 of 2014. Judgement was delivered on 16th May, 2019 and sentence upon mitigation was done on 30th September, 2019.
2. The Applicant thereafter on 14th December, 2022 filed an application under Section 333 of the *Criminal Procedure Code* seeking that the time he had spent in remand custody be incorporated into his sentence.
3. Directions were issued on the 2nd October, 2023 for the application to be heard and disposed off by way of written submissions and parties were to file their respective submissions.
4. The Respondent conceded to the Applicant’s application leaving the onus of scrutiny on this court.
5. In in the case of *Bethwel Wilson Kibor v Republic* [2009]eKLR the Court expressed itself as follows:-

“By proviso to section 333(2) of the Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take into 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 10 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.”

6. According to The *Judiciary Sentencing Policy Guidelines*:

“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. 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.”

7. This Court has reviewed the entire Criminal Case No.88 of 2019 noting that the accused was arraigned in Court on 22nd August, 2014 for an offence allegedly committed on the 20th August, 2014.

8. The Applicant was arrested on the 21st August, 2014 and remained in remand custody throughout his trial.

9. I thus find the application to be of merit.

10. The sentence imposed on the accused is hereby varied to include:

“ The Sentence shall run from the 21st August, 2014.”

It is so ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 6TH DAY OF MARCH, 2024.

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MOHOCHI S.M

(JUDGE)

