



**Kosgei v Republic (Miscellaneous Criminal Appeal E004 of 2022)
[2024] KEHC 3692 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3692 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPEAL E004 OF 2022
RN NYAKUNDI, J
APRIL 18, 2024**

BETWEEN

ALFRED KIPCHUMBA KOSGEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of murder and the same was reduced to manslaughter upon plea bargaining. He was convicted on his own plea of guilty and sentenced to serve 5 years.
2. The applicant has filed the present application and he urges the court to invoke section 333(2) of the [CPC](#).

Analysis And Determination

3. I have perused the application and the chief issue for determination herein is whether the applicant is entitled to review of sentence under Section 333(2) of the [Criminal Procedure Code](#).
4. The section provides as follows:
 - (2) 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.
5. The Judiciary Sentencing Policy Guidelines are also clear in this respect. They require that the court should take into account the time already served in custody if the convicted person had been in custody during the trial. Further, that a failure to do so would impact on the overall period of detention which would result in excessive punishment that in turn would be disproportionate to the offence committed.



6. In the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR the court expressed itself in the following terms: -

“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.”

7. It follows then that the court should state in its decision that indeed the time spent by the accused in custody has been considered and that it has factored it in the final sentence. Failure to do so means that the period has not taken into consideration.

8. The punishment prescribed by the law for the offence of manslaughter is life imprisonment. I take note that the applicant was found guilty of the offence of manslaughter. The trial court considered the mitigating factors and the objectives of sentencing in their totality.

9. The trial court in its sentencing decision stated as follows:

“However, in considering how lenient the court should be, there is need to consider the seriousness of the offence, circumstances under which it was committed, convict circumstances, period spent in remand, and also the need for convict to pay for the crime committed. I have weighed all that as well as the proposed sentences considering the offence is of manslaughter and the period spent in remand which is of about 4 years and 9 months. I do find the sentence of 5 years to be appropriate and adequate for the offence committed”

10. From the foregoing, it is my considered view that the sentence meted by the trial court was reasonable and took into account the provisions of section 333(2). Therefore, the applicant cannot benefit from the provisions of section 333(2). The application is thus dismissed.

DATED AND SIGNED AT ELDORET THIS 18TH DAY OF APRIL, 2024

R. NYAKUNDI

JUDGE

