



REPUBLIC OF KENYA



**Lagat v Republic (Criminal Petition E042 of 2023)
[2024] KEHC 8082 (KLR) (5 July 2024) (Judgment)**

Neutral citation: [2024] KEHC 8082 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E042 OF 2023
JRA WANANDA, J
JULY 5, 2024**

BETWEEN

AMOS KIMELI LAGAT PETITIONER

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The Petitioner has approached this Court vide the Notice of Motion dated 25/07/2023 seeking review of his sentence in terms that computation thereof do take into account the time that he spent in remand custody. This is pursuant to the proviso to Section 333(2) of the *Criminal Procedure Code*.
2. The background of the matter is that the Petitioner was charged in Eldoret High Court Criminal Case No. 28 of 2014 with the offence of murder contrary to Section 203 as read with Section 204 of the *Penal Code*. The particulars of the offence were that on 13/03/2014 at Sosian village, Wareng District within Uasin Gishu County, the Petitioner murdered one Josphat Kiptoo Kimeli.
3. Initially, the Petitioner pleaded not guilty and was released on bail pending trial. During the pendency thereof however, and after 2 Prosecution witnesses had testified, the Petitioner entered into a Plea Bargain agreement whereof the charge of murder was reduced to one of manslaughter and in regard to which the Petitioner was then convicted. The sentence was then read out on 8/02/2023 by Hon. Justice E.K. Ogola and in regard to which the Petitioner was sentenced to 10 years' imprisonment.
4. The Petitioner has now approached this Court with the instant Application. On its part, the State has not filed any response.



Determination

5. The issue that arises for determination herein is “whether this Court should review the sentence imposed against the Petitioner on the basis of the proviso to Section 333(2) of the [Criminal Procedure Code](#).”
6. Section 333(2) of the [Criminal Procedure Code](#) aforesaid provides as follows:

“Subject to the provisions of Section 38 of the [Penal Code](#), 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
7. Upon perusing the record of the trial Court, I note that the Petitioner was first arraigned before the Deputy Registrar of this Court on 17/03/2014 upon which he was remanded in custody. He later appeared before Hon. Justice F. Ochieng (as he then was) and after some adjournments, he finally took plea on 1/04/2014 whereof he denied the charges and a plea of not guilty was entered. He was then on 23/04/2015 granted a personal bond of Kshs. 500,000/- by Hon. Justice C.W. Githua.
8. It is not clear whether the Petitioner posted the bond immediately and got released but what is evident from the record is that he was out on bond during the rest of the trial. If therefore the proviso to Section 333(2) were to be applied then it is the said period between 17/03/2014 when he was first arraigned and 23/04/2015 when he was granted bond, a period of about 1 year and 1 month, that would need to be “taken into account”.
9. On the application of Section 333(2) aforesaid, the Court of Appeal in the case of [Bethwel Wilson Kibor vs. Republic](#) [2009] eKLR, stated as follows:

“By proviso to section 333(2) of [Criminal Procedure Code](#), where a person sentenced has been held in custody prior to such sentence, the sentence shall take 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 September 22, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.
10. The [Judiciary Sentencing Policy Guidelines \(2014\)](#) also provides as follows:

“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.”
11. In the circumstances, I find that the Petitioner has established a case for review of the sentence but limited to only the taking into account of the time spent in custody by the Petitioner.



Final Order

12. In the circumstances, I allow the Application but only to the extent of applying the proviso to Section 333(2) of the *Criminal Procedure Code* in the computation of the sentence.
13. Consequently, I direct that the period that the Petitioner spent in remand custody between the date of arraignment, namely, 17/03/2014, and the date of sentencing, namely, 23/04/2015, shall be subtracted in the computation of the sentence of 10 years imprisonment.

DELIVERED, DATED AND SIGNED AT ELDORET THIS 5TH DAY OF JULY 2024

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WANANDA J.R. ANURO

JUDGE

Delivered in the Presence of:

Mr. Onjoro for the State

Petitioner (Present virtually from Eldoret Main Prison)

Court Assistant: Brian Kimathi

