



REPUBLIC OF KENYA



**Situma v Republic (Criminal Appeal E033 of 2022)
[2024] KEHC 8511 (KLR) (12 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8511 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL E033 OF 2022**

**A MSHILA, J
JULY 12, 2024**

BETWEEN

RISPER KHAKASA SITUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the Applicant Risper Khakasa Situma was charged with Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code, Cap 63 Laws of Kenya.
2. The Applicant was convicted and was sentenced to serve a term of eight (8) years imprisonment; being aggrieved with the trial court's omission the Applicant lodged this application on the commencement date of the sentence.
3. At the hearing hereof the Applicant was unrepresented whereas the Respondent was represented by Prosecuting Counsel Mr Gacharia; both parties made oral submissions; hereunder are the parties respective submissions;

Applicants' Case

4. The Applicant sought for revision of sentence under the provisions of Section 333(2) of the Criminal Procedure Code; that the trial court failed to apply the aforesaid section and ought to have backdated the commencement date to the day of her arrest which was 12/11/2018;
5. To support her prayer for revision of the commencement date of the sentence the Applicant relied on the Charge Sheet and the Ruling on Sentence dated 17/08/2021;
6. The Applicant prayed that in balancing mercy and justice her sentence be revised to commence effective from the aforementioned date of arrest;



Respondent's Case

7. In response Prosecuting Counsel for the State confirmed that the sentence was silent on the commencement date; and was not opposed to the prayer for the revision of the date to commence from the date of the Applicants arrest;

Issues For Determination

8. After hearing the rival submissions this court has framed only one issue for determination which is as follows;
Whether to consider the initial date of arrest as the commencement date of the sentence;

Analysis

9. Whether to consider the initial date of arrest as the commencement date of the sentence;
The Applicant sought a revision of her sentence; she prayed that the provisions of Section 333(2) be invoked and for an order that the sentence imposed do commence from the date of her arrest.
10. Upon perusal of the trial courts judgment on sentencing this court indeed notes that it is silent on the aspect of the date of arrest as being the commencement date of the sentence; the trial court only comments that the Applicant has been in remand since 2018; indeed the trial court ought to have gone further by adding that the period spent in remand from the date of arrest be deducted from the sentence term,
11. The provisions of Section 333(2) of the *Criminal Procedure Code* read 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 of which it was pronounced, except where otherwise it is 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”.
12. The court record indicates that the Applicant was not granted bail as her safety would have been in jeopardy as the community was still hostile towards her; she was remanded throughout the pendency of the trial.
13. Based on the provision of the Section 333(2) aforesaid the Applicant is indeed entitled to the benefits of the section for the time spent in remand during the pendency of the case;
14. This court will take into consideration the period spent in remand from the date she was arrested to the time of conviction and will avail the benefit of the provisions of Section 333(2) to the Applicant; therefore, commencement of her sentence shall run from the date of her arrest which was the 12/11/2018 as opposed to the date when she was sentenced.

Findings And Determination

15. For the foregoing reasons this court makes the following findings and determinations;



- i. This court finds no good reason to warrant interfering with the sentences as both are found to be legal; and are upheld.
- ii. The sentence shall commence from the date of arrest being 12/11/2018 as stated on the Charge Sheet. The period spent in remand be deducted from the imprisonment term.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 12TH DAY OF JULY, 2024

HON. A. MSHILA

.....

JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of;

Mourice – Court Assistant

Baraka – for State - Absent

Applicant – Risper - present in person

