



**Ameju v Republic (Criminal Petition E001 of 2023)
[2024] KEHC 10050 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10050 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL PETITION E001 OF 2023
RN NYAKUNDI, J
AUGUST 8, 2024**

**IN THE MATTER OF NEW TRIAL/RE-HEARING OF APPEAL
UNDER ARTICLE 50(6) (A) OF THE CONSTITUTION OF KENYA**

BETWEEN

PHILIP NAKULEU AMEJU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On February 15, 2022, the trial court in Lodwar Criminal Case no 748 of 2018 convicted and sentenced the petitioner on four counts and he was to serve a concurrent sentence of 41 years for the offence of being in possession of specified firearm without a firearm certificate contrary to section 4A and 1(a) of the Firearms Act No 6 of 2010.
2. On the second count he was convicted with the offence of being in possession of ammunition without firearms certificate contrary to section 4(2) (a) as read with section 4(3) (b) of the Firearms Act. On this a 3-year sentence was imposed.
3. The third count was being in possession of AK47 riffle magazines without a firearms certificate contrary to section 4(2) (a) as read with section 4(3) (b) of the Firearms Act. On this a 3 years sentence was imposed.
4. On the fourth count he was charged with the offence of preparation to commit a felony contrary to section 308(1) of the penal code. He was convicted and a sentence of 5 years was imposed.
5. The petitioner subsequently appealed to this court in Lodwar Criminal Appeal E015 of 2022 which by a judgement dated 2.5.2023 acquitted the petitioner on the fourth count.



6. The applicant is before this court again for re-hearing. Having gone through the application of the said appeal but I take note that it was determined to finality.

Analysis And Determination

7. Article 50(6) (a) & (b) of the Constitution provides that:

A person who is convicted of a criminal offence may petition the High Court for a new trial if:-

- a. The person's appeal, if any has been dismissed by the Highest court to which the person is entitled to appeal, or the person did not appeal within the time allowed and
 - b. New and compelling evidence has become available
8. Thus for a new trial to be ordered under article 50(6) of the Constitution, the petitioner herein must prove two things: First that his appeal to but highest court has been dismissed or that he did not appeal within the stipulated time allowed for appeal and secondly, he must prove that new and compelling evidence has become available.
 9. The court can only consider application of such nature if they have satisfied the provisions of article 50(6) of the Constitution of Kenya 2010 in the present case, I don't find any new compelling evidence to warrant a re-trial.
 10. It is pertinent to mention that some of the issues being canvassed by the Applicant in this matter are not new. For the purpose of the record on Appeal, given the gravitas of the offences the Applicant was charged and convicted the court had to lean towards aggravating factors that the mitigation offered by the Applicant. Thus, a court has to exercise judicial excretion keeping in view the recognized principles and factors in sentencing. The grievance raised by the Applicant in this new post judgment on appeal interlocutory application is more to do with the period he spent in remand custody. Undoubtedly, the Applicant had been granted bond on the 14.3.2019 and subsequent release on 18.3.2019. Previously, he was arraigned before court on 27.11.2018. Given the formulation of section 333(2) of the C.P.C the period spent in a pre-trial detention can be summed up to be approximately close to 10 months. Now the question which arises is whether the unfettered discretion of this court should be exercised in a manner to give credit for the 10 months spend in a pre-trial detention. In such a case being a provision, which threatens infringement of article 50 (2) (a) on presumption of innocence, article 25(a) freedom from torture and cruel, inhuman or degrading treatment of punishment, article 27 every person has a right to equality and freedom from discrimination in all spheres, article 29 on the Right to Freedom and security of the person of the Constitution the earlier order on sentence be reviewed to in cooperate the pre-trial detention of 10 months.
 11. That being the case, the order on sentence imposed by the trial court and as affirmed by this court shall run concurrently with a credit of 10 months when the applicant served in remand custody awaiting commencement and conclusion of his trial.
 12. Orders accordingly.

DATED SIGNED AND DELIVERED AT LODWAR THIS 8TH DAY OF AUGUST 2024

In the Presence of

Mr. Kakoi for the State



Applicant

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R. NYAKUNDI

JUDGE

