



**Somiyon v Republic (Criminal Revision E563 of 2024)
[2024] KEHC 9867 (KLR) (Crim) (5 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 9867 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E563 OF 2024
LN MUTENDE, J
AUGUST 5, 2024**

BETWEEN

ELISA BOAZ SOMIYON ALIAS JEURI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Elisa Boaz Somiyon alias Jeuri, the Applicant was charged with the offence of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#). He was taken through full trial, convicted and sentenced to serve ten (10) years imprisonment.
2. Through an undated application filed herein on 14th February, 2024, he seeks review / revision of sentence under Section 362 of the Criminal Procedure Code (CPC).
3. The application is premised on grounds that the trial court did not consider the period spent in remand custody as per the provisions of Section 333 of the [CPC](#).
4. The application is supported by an affidavit sworn by the applicant where he depones that he was arrested on 23/11/2022 and he remained in remand custody until he was sentenced; and, being a young man he is still energetic and youthful hence he can serve the country as well as taking care of his family consisting of a wife and two children.
5. The application was disposed through oral submissions where the applicant urged the court to consider time spent in custody.
6. The State/respondent have conceded the application and have enjoined this court to consider the time spent in remand custody.



7. I have considered the application and supporting arguments. The provisions of Section 362 of the CPC provide that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate Court.”

8. The sentence meted out was for the applicant to serve a period of 10 years, no direction was given on the period the applicant was in remand custody.

9. Section 333(2) of the CPC provides that:

(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

10. The applicant was arrested on 23/11/2022 and did not secure bond. The court had a duty to consider the period served, the omission was irregular and a serious violation.

11. The Judiciary Sentencing Policy Guidelines states that:

“7.10: 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.”

12. In the result, I hereby correct the irregularity by directing the sentence of 10 years imposed to be effective from the date of arrest, the 23/11/2022.

13. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 5TH DAY OF AUGUST, 2024.

L. N. MUTENDE

JUDGE

