



**Maranga v Republic (Miscellaneous Criminal Application
E054 of 2023) [2024] KEHC 12994 (KLR) (16 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 12994 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E054 OF 2023
DKN MAGARE, J
OCTOBER 16, 2024**

BETWEEN

JOB NDIRANGU MARANGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a Ruling over an application dated 29/8/2023 by the Applicant seeking the revision of sentence to take into consideration time spent in custody.
2. The application is supported by the affidavit of the Applicant and it was deposed in material as follows:
 - a. The Applicant was convicted of grievous harm and sentenced to 5 years imprisonment.
 - b. The Applicant was arrested on 25/2/2022 and convicted on 18/10/2022.
 - c. The time spent in custody was not considered during sentencing.
3. The Respondent did not file a response.

Submissions

4. The Applicant filed submissions dated 2/1/2024. It was submitted that the court did not take into account Section 333(2) of the *Criminal Procedure Code* regarding period spent in custody. He relied on *Abamad Abolfathi Mobammed & Another vs Republic* (2018) eKLR. Based on this case, he submitted that the period he had stayed in custody of 9 months was not considered.



Analysis

5. The revisionary powers of this court are set out under the law. Under Section 362 of the [Criminal Procedure Code](#) it is provided as follows:

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.

6. Further, Section 367 of the [Criminal Procedure Code](#) on the other hand, provides as hereunder:

When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.

7. I note that the Applicant was charged with the offence of causing grievous harm contrary to Section 234 of the [Penal Code](#).
8. The particulars of the offence were that on diverse dates between 10/11/2020 and 8/12/2020, at Gachika village Kiganjo location within Nyeri County unlawfully did grievous harm to Mercy Wairimu a child aged 2 years and 6 months.
9. The Applicant was also charged with two alternative counts respectively; of cruelty to a child contrary to section 127(1) (b) of the [Children Act](#), 2001 and of subjecting a child to cruel punishment contrary to Section 18(1) as read with Section 20 of the [Children Act](#), 2001.
10. In the High Court of Malaysia in *Public Prosecutor vs. Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735 it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case”

11. The trial court considered the case and having convicted the Applicant on count 1 and count 2, sentenced him to serve 5 years imprisonment. On the third count, he was acquitted. Aggrieved the Applicant filed for revision of the sentence only. There was no appeal on conviction.
12. The Supreme Court has propounded in the [Francis Karioko Muruatetu & Another v Republic](#) (2017) eKLR the following guidelines with regard to mitigating factors applicable in a re-hearing sentence:
- (a) age of the offender;
 - (b) being a first offender;



- (c) whether the offender pleaded guilty;
 - (d) character and record of the offender;
 - (e) commission of the offence in response to gender-based violence;
 - (f) remorsefulness of the offender;
 - (g) the possibility of reform and social re-adaptation of the offender;
 - (h) any other factor that the Court considers relevant.
13. I must however consider that the mitigation factors by no way replace judicial discretion as observed by the Supreme Court in the *Muruatetu Case* (*supra*).
14. The Applicant submitted that he was arrested on 25/2/2022 and convicted on 18/10/2022 and had served 9 months at the time of conviction. I have to consider whether there is injustice in committing the Applicant to 5 years imprisonment. Under Section 234 of the *Penal Code*, it is provided that any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life. The trial court sentenced the Applicant based on Section 127 of the *Children Act* as follows:

“ 127.

- (1) Any person who having parental responsibility, custody, charge or care of any child and who –
 - a. willfully assaults, ill-treats, abandons, or exposes, in any manner likely to cause him unnecessary suffering or injury to health (including injury or loss of sight, hearing, limb or organ of the body, and any mental derangement); or
 - b. by any act or omission, knowingly or willfully causes that child to become, or contributes to his becoming, in need of care and protection, commits an offence and is liable on conviction to a fine not exceeding two hundred thousand shillings, or to imprisonment for a term not exceeding five years, or to both.

Provided that the court at any time in the course of proceedings for an offence under this subsection, may direct that the person charged shall be charged with and tried for an offence under the Penal Code, if the court is of the opinion that the acts or omissions of the person charged are of a serious or aggravated nature”

15. In my evaluation, the lawful punishment was for a period not exceeding 5 years or fine not exceeding 200,000/= shillings or both for a person having parental responsibility to the minor in terms of care and custody as is expected of the Applicant herein.
16. I note the Applicant was also a first offender and prays this court to take into consideration the time spent in custody. He had parental responsibility for the minor aged 2 and a half years and the child must



have looked upon him for security and care. The inverse was however the case. The court also adverts its mind to the glaring fact that nowhere did the Applicant express apology, mercy and forgiveness even though he did not appeal against the conviction. He only mitigated for leniency on the basis that he had another wife and children who needed his care as well as an old mother.

17. In the circumstances, I am unable to find reason to interfere with the discretion of the trial magistrate who sentenced the Applicant for 5 years without a fine.
18. The court did the best it could to give a just punishment in accordance with the law. However, the sentence should take into account the time that the Applicant had spent in custody from the date of arrest on 11/2/2022.

Determination

19. I therefore make the following orders: -
 - a. The sentence of 5 years imprisonment is upheld and shall run from the date of arrest on 11/2/2022.
 - b. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 16TH DAY OF OCTOBER, 2024.

Ruling delivered through Microsoft Teams Online Platform.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Mwakio for the State

Applicant – present

Court Assistant – Jedidah

