



**Mamboleo v Republic (Criminal Revision E284 of 2022)
[2023] KEHC 437 (KLR) (16 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 437 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E284 OF 2022
JN ONYIEGO, J
JANUARY 16, 2023**

BETWEEN

STEPHEN MAMBOLEO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was on September 23, 2021 charged before the Taveta Pm's court with the offence of dealing with critically endangered species contrary to section 92(2) of the [wild life conservation and management Act](#) no. 47 of 2013. Particulars were that on September 22, 2021 around 1630hrs at Malukiloriti area within Taita Sub-county in Taita Taveta County was found dealing in pangolin scales weighing 4kms approximately 210 scales concealed in a manila sack without a permit.
2. Having denied the charge, the matter proceeded to full trial. The applicant was on April 4, 2022 found guilty and convicted. Subsequently, he was on April 4, 2022 sentenced to serve seven years' imprisonment.
3. Aggrieved by the sentence, the applicant filed what is referred to as a notice of appeal seeking review of the entire sentence on grounds that; he is critically ill suffering from cancer which was diagnosed 5 years ago hence difficult to manage while in prison; he is the sole breadwinner in his family and that the trial court did not take into account the six months period spent in remand custody.
4. During the hearing, the applicant reiterated the content contained in the application for review thus emphasizing on the need for the court to consider his poor health. In response, counsel for the state opposed the application on grounds that prisons have sufficient medical facility to take care of the applicant's ailment.



5. I have considered the application herein and the response thereof. The application is anchored on grounds that the learned magistrate did not take into account the applicant's sickness and period spent in remand custody.
6. It is trite law that this court is empowered to exercise its supervisory powers under article 165(6) and (7) of *the Constitution* to call for a subordinate court's record so as to make any direction or order to ensure fair administration of justice. Besides, under section 362 and 364 of the *criminal procedure code*, the High Court is empowered to call upon and examine any record of criminal proceedings from a subordinate court so as to satisfy itself as to the correctness, legality, propriety on sentence passed or order made and on the regularity of the proceedings.
7. I am alive to the fact that sentencing is at the discretion of the trial court. However, this court is empowered to intervene where the sentence meted out is illegal or excessive. See *Shadrack Kipkoech Kogo v Republic Criminal Appeal Number 25 of 2003* where the Court of Appeal held that sentencing is at the discretion of the trial court and that an appellate court can only interfere or intervene if it is shown that the trial court took into consideration irrelevant factors, applied wrong principles of the law or that the sentence was excessive and therefore an error.
8. In the instant case, the applicant claimed that the period of six months spent in custody was not taken into account. Indeed, under section 333(2) of the *CPC*, before sentence is passed, a trial court is duty bound to take into account the period spent in remand custody. In this case, the applicant was in custody since September 23, 2021 when he took plea until April 4, 2022 when he was sentenced translating to six months and eleven days' period spent in remand custody.
9. From the record, the learned magistrate did not consider the period spent in remand custody as stipulated under section 333(2) of the *CPC*. On account of that ground, the applicant's period spent in remand custody shall be taken into account when computing sentence. Regarding the aspect of sickness, I do agree with the state that the prisons department has medical facilities which if not adequate an inmate can be referred to an ordinary hospital in case of specialized treatment.
10. As to the excessive sentence, the court is fully aware of the seriousness of the offence committed. The sentence meted out is legal and appropriate in the circumstances. Accordingly, the application is only allowed to the extent that in computing sentence the period of six months and eleven days spent in remand custody shall be taken into account.

ROA 14 days

DATED, SIGNED AND DELIVERED VIRTUALLY AT MOMBASA THIS 16TH DAY OF JANUARY 2023.

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J.N. ONYIEGO

JUDGE

