



**Mang'ao v Republic (Criminal Revision E292 of 2022)
[2023] KEHC 2655 (KLR) (Crim) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 2655 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E292 OF 2022
JM BWONWONG'A, J
FEBRUARY 16, 2023**

BETWEEN

JOSEPH MUNYAO MANG'AO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the sentence delivered by Hon. E. Boke (S.P.M) on 4th November 2021 in Kibera Chief Magistrate's court criminal case no. 976 of 2019 Republic vs Joseph Munyao Mang'ao & another)

RULING

1. The applicant and another not before this court was charged and after a full trial he was convicted of the offence of house breaking and stealing contrary to section 304 (1) as read with section 279 (b) of the Penal Code (Cap 63) Laws of Kenya.
2. He was sentenced to serve four (4) years on the first limb and five (5) years on the second limb. The sentences were ordered to run concurrently.
3. The applicant has now approached this court seeking a revision of his sentence. The grounds raised are as follows. That the trial court failed to consider the period spent in the pre-trial remand custody. Further, he is at risk of serving an excessive sentence contrary to the fundamental principles of sentencing.
4. He has urged the court to consider a non-custodial sentence subject to the time already served.



The submissions of the parties

5. The applicant made oral submissions and urged the court to reduce his sentence in accordance with the provisions of section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya.
6. Ms. Akunja learned Prosecution Counsel made oral submissions opposing the application. She submitted that the trial court took into consideration the time spent in the pre-trial remand custody and the applicant's sentence was reduced accordingly.

Issues for determination.

7. Having considered the application and the applicable law, the issue for determination is whether the applicant has made out a case for the grant of orders sought.

Analysis and determination

8. The power of this court in its revisionary jurisdiction is founded under section 362 of the *Criminal Procedure Code* (Cap 75) Laws of Kenya which provides that:

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court to satisfy 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.”

9. Additionally, article 165 (6) of the *Constitution* of Kenya provides that:

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body, or authority exercising a judicial or quasi-judicial function, but not over a superior court.”

10. On the merits of the application, the applicant seeks a review of the sentence of the lower court which re-sentenced him to serve a cumulative sentence of five (5) years imprisonment. The argument is that the court did not consider the provision of section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya. The applicant has submitted that he spent 2 years and 4 months in pre-trial remand custody.

11. In view of the above section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides that:

“(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 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.

12. I have perused the sentencing notes of the “trial court. I find that the applicant was arrested on July 29, 2019 and arraigned in court on July 31, 2019. He applied for bail/bond and the same was granted. From the record, he could not afford to raise the cash bail. He was therefore in custody until his sentencing



on November 4, 2021 having spent 2 years 3 months and 6 days in the pre-trial remand custody. He was sentenced to serve a cumulative of five years imprisonment.

13. The lower court noted that since the accused had been in custody for two years, he would only serve three years imprisonment. It is clear that trial court took into consideration the pre-trial custody period.

14. In the premises, I find that the application fails with the result it is hereby dismissed for lacking in merit.

RULING SIGNED, DATED AND DELIVERED IN OPEN COURT AT NAIROBI THIS 16TH DAY OF FEBRUARY 2023.

J M BWONWONG'A

JUDGE

In the presence of-

Mr. Kinyua: Court Assistant

The applicant in person

Ms Joy for the respondent

