



**Muthama v Republic (Criminal Revision E082 of 2022)
[2023] KEHC 754 (KLR) (Crim) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 754 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E082 OF 2022**

DO OGEMBO, J

FEBRUARY 14, 2023

BETWEEN

JOAKIM KIRAGU MUTHAMA APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Joaquim Kiragu Muthama, has moved this court by way of a notice of motion application herein on April 28, 2022. The application is brought under section 362, 364 and 364 of the [Criminal Procedure Code](#) prays for revision of the sentence imposed against the applicant on July 14, 2021, in criminal case number 223 of 2019, at the Chief Magistrate’s court, Makadara. In the affidavit in support of the application, the applicant has deponed that he was convicted and sentenced to serve 15 years imprisonment for the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#). That as at the time of the sentence, he had spent 2 years and 7 months in remand custody. The applicant has also deponed as to the rehabilitation he has undergone while at Prison, the skills he has acquired and imparted to fellow prisoners e.g dancing and acting.
2. Ms Kibathi, for the state, on the other hand, has opposed this application and submitted that the sentence aggrieved of is in fact lenient, since the law prescribes for death sentence. That in sentencing the applicant, the court duly considered the period spent in custody. Counsel urged that this application be dismissed.
3. I have considered this application and the submissions made to it by the 2 sides. Under section 362 of the [Criminal Procedure Code](#);

“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.”

4. For an application for revision such as this one, it is therefore incumbent upon the applicant to prove the incorrectness, illegality or impropriety in the order or finding of the subordinate court.

The proviso to section 333(2) on the other hand states;

“ 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.”

5. With regard this application, I have perused and considered the record of proceedings of the trial court. The applicant was first arraigned in court on January 18, 2019 and charged with the offence of Robbery with violence contrary to section 296(2) of the *Penal Code*. Upon being convicted on May 28, 2021, the applicant was accorded the opportunity to offer his mitigation. He stated the following:

“ I am remorseful. I am a bread winner to my family. I am the 1st born in our family. My parents depends on me. I pray the court considers the time in custody.”

The sentence proceedings of July 27, 2021 was as follows:-

“ The charges, the evidence tendered, the probation report dated the July 27, 2021 and the mitigation is considered. The accused person is sentenced to 15 years imprisonment from the January 18, 2019. 14 days. Right of appeal.”

6. If the trial court ordered the sentence to run from January 18, 2019 as it did, then clearly the sentence took into account the period the applicant spent in remand custody since this was the date the applicant was first arraigned in court and remanded.
7. And the sentence of 15 years imprisonment is legal and proper in view of the fact that under section 296(2) under which the applicant was charged and convicted the sentence prescribed for the offence is death.
8. This application of the applicant dated April 28, 2022 therefore totally lacks merit. I dismiss the same wholly. It is so ordered.

D. O. OGEMBO

JUDGE

14TH FEBRUARY, 2023.

Court:

Ruling read out in open court (on line) in the presence of the applicant (Nairobi Remand), and Mr. Mutuma for the state.

D. O. OGEMBO

JUDGE

14TH FEBRUARY, 2023

