



**Kamau alias Rasta v Republic (Miscellaneous Criminal Application E141 of 2021) [2023] KEHC 2951 (KLR) (15 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2951 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E141 OF 2021**

**GL NZIOKA, J  
MARCH 15, 2023**

**BETWEEN**

**JULIUS MWANGI KAMAU ALIAS RASTA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was arraigned before the Chief Magistrate's Court's Court at Naivasha charged jointly with others not before the court *vide* criminal case No 1925 of 2016, with the two offences of robbery with violence contrary to section 295 as read with section 296(2) of the [Penal Code](#) and alternative counts of handling suspected stolen goods contrary to section 322 (1) of the [Penal Code](#).
2. He pleaded not guilty and the case was fully heard. He was found guilty and convicted in three (3) counts of the offence of handling suspected stolen property and sentenced to serve two (2) years imprisonment on each count. The court ordered the sentence to run concurrently.
3. He now seeks for sentence review on the ground that, the trial court did not consider the period he was in custody while meting out the sentence. He relies on section 333 (2) of the [Criminal Procedure Code](#) and the affidavit he has sworn in support of the application. He further prays that, the court orders the sentence he is serving *vide* Criminal Case No 127 of 2017, run from the date he was arraigned in court.
4. The respondent was given an opportunity to respond to the application but did not file any response and left the matter to be dealt with by the court, therefore the application is unopposed.
5. I have considered the application and note that the applicant was first arraigned before the court on January 23, 2017 *vide* in Chief Magistrate's Court criminal case No 122 of 2017. However, on January 27, 2017, the matter was consolidated with the matter herein and the matter in No 122 of 2017 withdrawn. The charges were read afresh to him and upon entering a plea of not guilty he was granted a bond of Kshs 500,000.00 with a surety of a similar amount.



6. It also suffices to note that the applicant had another case namely Chief Magistrate’s criminal case No 127 of 2017, wherein he was apparently arrested on August 10, 2016. He was in custody from then up to date of sentence on November 28, 2018. Therefore, this period cannot be taken into account herein as he was in lawful custody. The period that can only be considered is from November 28, 2018 to the date of his sentence on October 27, 2020. That is a period of about two years.
7. In that regard the provision of section 333 (2) of the *Criminal Procedure Code* states that:

“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”
8. I further note that he was charged jointly with another by the name of Samuel Kibue Kamau who lodged an application in High Court criminal revision No E027 of 2020, and heard by Justice Mwongo on February 12, 2021, wherein he ordered as follows:

“The offender to serve a non-custodial sentence in lieu of imprisonment for three (3) years with immediate effect in a probationary programme with appropriate treatment tools to be designed and overseen by the probation officer. The said programme to maintain a record of the offenders’ participation.”
9. Pursuant to the aforesaid, the court revises the accumulated period meted out upon the applicant of six (6) years imprisonment as follows:
  - a. That the six (6) year custodial period shall be reduced by a period of two (2) years, which shall not attract any remission.
  - b. The remaining period of four (4) years shall run from the date of October 27, 2020.
  - c. The prison’s record be amended to reflect the same.
10. Further, to accord him the same benefit as his co accused, he shall be released to serve the remaining sentence on probationary service. The sentence relates to matter, criminal Magistrate’s criminal case No 1925 of 2016 and not criminal Magistrate’s Court criminal case No 127 of 2017.
11. It is so ordered.

Dated, delivered and signed on this 15<sup>th</sup> day of March, 2023

**GRACE L NZIOKA**

**JUDGE**

**In the presence of:**

Applicant in person virtually

Mr. Atika for Respondent

**Ogutu; Court Assistant**

