



REPUBLIC OF KENYA



KENYA LAW
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**Kamanda v Republic (Criminal Revision 291 of 2023)
[2023] KEHC 19758 (KLR) (Crim) (11 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 19758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION 291 OF 2023
DR KAVEDZA, J
JULY 11, 2023**

BETWEEN

CLINTON MATASIO KAMANDA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for revision of the sentence of 7 years imprisonment imposed by Hon. R. Kitungwa (S.R.M) on 15th December 2022 in Kibera Magistrates Court Criminal Case No. 2404 of 2021 Republic vs Clinton Matasia)

RULING

1. The applicant was charged and convicted of the offence of being in possession of a firearm contrary to section 89(1) of the [Penal Code](#), Cap 63 Laws of Kenya. He was convicted and sentenced to serve seven (7) years imprisonment.
2. The applicant has now filed an application dated March 14, 2023 seeking a revision of his sentence. He prayed that the court takes into account the one (1) year he spent in pre-trial custody and revise his sentence.
3. The application is supported by an affidavit sworn by the applicant, Clinton Matasia Kamanda. He avers that he is a first offender and pleads with the court for leniency. The application is not opposed by the State.



4. While the application is premised on the provisions of section 333 (2) of the *Criminal Procedure Code*, it invokes the revisionary jurisdiction of this court which is donated by section 362 of the Criminal Procedure Code which reads 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.'

5. Further, 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.'

6. I have noted from the sentencing proceedings that the applicant was arrested on November 12, 2021 and upon arraignment, he applied for bail/bond and the same was granted. He did not raise the cash bail and was therefore remanded in custody until December 15, 2022 when the case was concluded. He was subsequently sentenced to serve seven (7) years imprisonment.

7. It is clear that the trial court did not consider the period the applicant had spent in custody which from my computation is 1 year 1 month and 3 days.

8. In *Abmed Abolfathi Mohamed v Republic [2018] eKLR* the Court of Appeal held as follows;

' Taking into account' the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to Section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellant's sentence of imprisonment to run from the date of arrest on June 19, 2012.'

9. The Judiciary Sentencing Policy Guidelines states as follows as regards the section:

' The proviso to Section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.'



10. Based on the foregoing decisions and the existing jurisprudence, I allow the application and direct that the period spent in custody be included in the computation, that is to say, that the sentence shall run effective from the date of arrest, which November 12, 2021.

11. It is so ordered.

RULING DATED AND DELIVERED VIRTUALLY THIS 11TH DAY OF JULY 2023.

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D.KAVEDZA

JUDGE

In the presence of:

Ms Akunja for the State

Applicant present on the platform

Habiba C/A

