



**Nyaronda v Republic (Criminal Revision E202 of 2023)
[2023] KEHC 20369 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20369 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL REVISION E202 OF 2023
LN MUTENDE, J
JULY 17, 2023**

BETWEEN

DAGLAS KABURU NYARONDA (SAMUEL OGALO MATARA) APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Daglas Nyaronda, the Applicant, was charged before the Court Martial with the offence of giving a false answer on enlistment contrary to section 112 of the *Kenya Defence Act*; and, two (2) other counts of furnishing false information contrary to section 113(b) of the *Kenya Defence Forces Act*.
2. Upon being taken through full trial, the applicant was convicted and sentenced to serve two (2) years imprisonment on each count, sentences that were to run concurrently.
3. Through an undated application filed herein on March 27, 2023, the applicant urges that the period he was held in closed custody was not taken into account during sentencing.
4. During hearing Mr. Bosire, learned counsel for the applicant submitted that the applicant was held in closed custody for eighteen (18) months during trial and having served four (4) months in prison, he has already served the entire sentence.
5. Mr Yator, learned counsel for the Respondent conceded the application on the ground that the applicant was arrested on August 11, 2021, placed in custody for 25 days prior to the trial commencing that concluded on March 17, 2023.
6. With regard to time spent in custody, Section 333(2) of the *Criminal Procedure Code* provides thus:

“... Subject to the provisions of section 38 of the Penal Code (Cap. 63) every
(2) 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...”

7. The judiciary sentencing guidelines make it mandatory for any court to indicate in its decision time spent in custody and also deduct this period by emphatically stating that the sentencing should run from the date of arrest.
8. In the case of *Ahamad Abolfathi Mohammed & Another v Republic* (2018) eklr The Court of Appeal held that:

“...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...”
9. It is apparent that the trial court (Court Martial) failed to comply with the requirement of the law in respect of time spent in remand/closed custody. The applicant was arrested on the August 11, 2021, he was sentenced on March 17, 2023. The period he stayed in closed custody should have been considered.
10. The upshot of the above is that the application is meritorious and is allowed. The sentence meted out shall be effective from the date of arrest, the August 11, 2021.
11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 17TH DAY OF JULY 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Mr. Bosire for Applicant

Ms. Kiragu for ODPP

Court Assistant – Mutai

