



**Kimeu v Republic (Miscellaneous Application E045 of 2022)
[2023] KEHC 24155 (KLR) (16 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24155 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS APPLICATION E045 OF 2022
GMA DULU, J
OCTOBER 16, 2023**

BETWEEN

DOMINIC NZANGI KIMEU PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application by way of Chamber Summons filed on 4th April 2022 by the convict Dominic Nzangi Kimeu.
2. The applicant, who is in prison custody seeks the revision of his prison sentence on the grounds of Section 333 (2) of the Criminal Procedure Code (Cap.75) which provides that the prison sentence shall take account of the period spent in custody.
3. The application is supported by the affidavit of the convict in which it is stated that the applicant has been in custody for more than 10 years since arrest on 13th December 2012; that his death sentence was on appeal in Machakos Criminal Appeal No. 84 of 2015 substituted with 14 years imprisonment for handling stolen goods contrary to Section 332(2) of the Penal Code, and that the period of 2 ½ years he spent in remand custody during trial be factored in the sentence.
4. The applicant, in the supporting affidavit, relied on the case of Vincent Silas Jona & 87 Others = Versus = Republic – Machakos High Court No. 15 of 2020, and the case of Ahmed Aboulfathi Mohamed & Another – Criminal Appeal No. 135 of 2016.
5. The application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the applicant Dominic Nzangi Kimeu as well as the submissions filed by the Director of Public Prosecutions.



6. I note that in his submissions the applicant has relied on the case of *Dominic Nzangi Kimeu =Versus Republic* (2017) eKLR a criminal appeal at Machakos High Court involving the same applicant wherein on 31st July 2017, the court substituted the conviction for robbery with handling stolen goods, and reduced the death sentence to 14 years imprisonment from 18th May 2015. The applicant has also filed a favourable report of good conduct dated 6th November 2018 from the Officer in Charge Kamiti Main Prison, and another dated 11th November 2022 form Makueni Main Prison.
7. The Director of Public Prosecutions on their part, have submitted that the applicant had served a substantial part of his prison term, and that they thus do not oppose the request for review of sentence to factor in the period of pre-trial remand custody.
8. Having considered and reviewed the entire matter herein, I am of the view that both the trial court and the High Court on appeal, were not able to consider the period of pre-trial remand custody in sentencing the applicant, because the trial court had no choice but to impose a sentence of death. As for the High Court, it substituted the charge with a lesser charge, and sentenced accordingly without listening to or considering any mitigating factors.
9. The Director of Public Prosecutions also does not oppose the application.
10. I thus allow the application and order that the prison sentence imposed by the High Court in Machakos High Court Criminal Appeal No. 84 of 2015 – *Dominic Nzangi Kimeu =Versus= Republic* (2017) eKLR be and is hereby reduced by 2 years and 6 months being the period of remand custody in the trial court.

DATED, SIGNED AND DELIVERED THIS 16TH DAY OF OCTOBER 2023 VIRTUALLY AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Applicant

Mr. Kazungu for State

