



REPUBLIC OF KENYA



KENYA LAW
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**Kairu v Republic (Criminal Revision E460 of 2023)
[2023] KEHC 23158 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23158 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E460 OF 2023
PM MULWA, J
OCTOBER 5, 2023**

BETWEEN

PETER NDUNGU KAIRU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein Peter Ndungu Kairu by his Notice of Motion application pleads with the court to consider the period spent in custody pre-conviction period. He states he was arrested on May 29, 2019 and was convicted on March 11, 2021, and subsequently sentenced to 10 years imprisonment.
2. He was charged with robbery with violence, contrary to section 296(2) of the Penal code. The particulars are that on April 20, 2019, at Githurai Kimbo in Ruiru Sub- County within Kiambu jointly with others not before the court using motor vehicle no KAR 055J make Toyota Shark a matatu white in colour, while armed with knives robbed Samwel Muturi Mburu his mobile phone make Samsung valued at Kshs 18,000/=, memory card valued at Kshs 2,000/= and Kshs 109,000/= and immediately before the time of such robbery threatened to use actual violence to the said Samwel Muturi Mburu.
3. From the face of the application and the nature of the prayers sought therein, it is clear that the same was filed pursuant to the provisions of section 333(2) of the Criminal Procedure Code. The said section provides 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.”



4. The Judiciary Sentencing Policy Guidelines & Directions provides that the proviso to Section 333(2) of the Criminal Procedure Code obligates courts 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 excessive punishment that is not proportional to the offence committed.
5. The applicant was arrested on May 29, 2019, convicted on March 11, 2021 and subsequently sentenced to 10 years imprisonment. From the record, the trial court did not take into consideration the time spent in custody before conviction.
6. This court will exercise its revisionary jurisdiction under Sections 362 and 364 of the Criminal Procedure Code and take into consideration the time spent in custody pre-conviction.
7. It is the finding of this court that the sentence of 10 years will run from the time of his arrest on May 27, 2019.

It is so ordered

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 5TH DAY OF OCTOBER 2023.

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P.M. MULWA

JUDGE

In the presence of:

Kinyua/ Duale – Court assistants

Applicant in person – present virtually from Kamiti

Mr. Gacharia – for the Respondent

