

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KERICHO

MISC. CRIMINAL APPLICATION NO. E018 OF 2020

GEOFFREY KIPKIRUI MOROGO.....PETITIONER

V E R S U S

REPUBLIC.....RESPONDENT

R U L I N G

1. The Application coming for consideration in this ruling is the one filed on 15/12/2020 seeking the inclusion of the period the Applicant spent in custody prior to the sentence in the computation of the sentence of forty (40) years imprisonment.
2. The Applicant was sentenced to forty (40) years imprisonment for the offence of murder contrary to section 203 as read with section 204 of the Penal Code.
3. The Applicant had been in custody since 14/10/2015 when he was first arraigned in Court.
4. Section 333 (2) of the Criminal Procedure Code makes it mandatory for courts to factor the time spent in custody when meting out sentences and there are authorities on the same subject matter such as the case of **JOSIAH MUTUA MUTUNGA & ANOTHER VS. REPUBLIC [2019] eKLR**, whereby Odunga J. stated as follows;

“It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced must be taken into account in meting out the sentence. While the court may in its discretion decide that the sentence shall run from the date of sentencing or conviction, it is my view that in departing from the above provisions, the court is obliged to give reasons for doing so since the decision not to include the period spent in custody is an exception to the statutory provision that can only be justifiable upon reasonable grounds...”

5. I accordingly allow the undated Application filed by the applicant on 15/12/2020 and I direct that the sentence of forty (40) years imprisonment starts to run from 14/10/2015 and not from 28/7/2020 when he was sentenced.

Orders to issue accordingly.

Delivered, signed and dated at Kericho this 4th day of February, 2021.

A. N. ONGERI

JUDGE