



REPUBLIC OF KENYA



KENYA LAW
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**Gitau v Republic (Miscellaneous Criminal Application E042 of 2021)
[2024] KEHC 13965 (KLR) (6 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E042 OF 2021
DO CHEPKWONY, J
NOVEMBER 6, 2024**

BETWEEN

STEPHEN KAMAU GITAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has moved this court by way of Chamber Summons Application seeking to have period stayed in remand considered. In her supporting Affidavit, the Applicant deponed that he was charged and convicted for the offence of Defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act*. He was then sentenced to serve 25 years imprisonment on 27th November, 2018.
2. Being aggrieved, the Applicant appealed to the High Court at Nairobi and the sentence of twenty-five (25) years imprisonment was reduced to fifteen (15) years imprisonment on 12th September, 2019.
3. The Applicant is now seeking to have the period of one year and two months he stayed in remand from time he was arrested to the time he was convicted to be considered as required under Section 333 (2) of the *Criminal Procedure Code*. He avers that he is of good character and a first offender, thus urges the court to consider his application.
4. The state indicated to court that it was not opposed to the application but called for the court's verification of the original record of Gatundu Law Courts.

Analysis and Determination

5. Having considered the application and grounds upon which the same is premised and find that the Applicant seeks for the one year and two months he has spent in custody to be put into consideration in accordance with Section 333 (2) of *Criminal Procedure Code*.



6. It is trite law that Section 333(2) of the *Criminal Procedure Code* provides as follows: -

“Subject to the provisions of Section 38 of the *Penal Code*, 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

7. According to the *Judiciary Sentencing Policy Guidelines*:-

“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.”

8. From the record, on 26th September, 2017 the charges were read out and full particulars thereof were explained to the Applicant who pleaded ‘Not Guilty’ and the court ordered that he be released on a bond of KShs. 300,000/= . On 13th November, 2017, upon application, the court reviewed the bond terms to KShs. 200,000/= and the bond was approved on 23rd November, 2017, whereby the Applicant was released.

9. The matter then proceeded for hearing on diverse dates and the court delivered its Judgment therein on 27th November, 2018 whereby the Applicant was convicted and sentenced to twenty five (25) years imprisonment.

10. The Applicant appealed against the conviction and sentence in Kiambu High Court Criminal Appeal No. 38 of 2019 where the High Court in a judgment delivered on 12th September, 2019 set aside the sentence and substituted it with a sentence of fifteen years imprisonment which was to be effective from date of conviction and sentence by the trial court.

11. From the decision in the Judgment of the High Court, it was indicated that the sentence was to be effective from the date of conviction and sentence by the trial court. This means that the date of the substituted sentence should be calculated from 27th November, 2018 which means that the High court had already considered the time spent in prison. Therefore, there is no need to address the application as the period of custody had already been factored in. The upshot is that, the undated Chamber Summons filed on 2nd September, 2022 lacks merits and the same is hereby dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU THIS 6 TH DAY OF NOVEMBER, 2024.

D. O. CHEPKWONY

JUDGE

In the presence of:-

Applicant in person - Absent



M/S Ndeda counsel for the Respondent

Court Assistant - Martin

