



**Maina v Republic (Criminal Revision E237 of 2024)  
[2024] KEHC 14170 (KLR) (14 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14170 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MURANG'A  
CRIMINAL REVISION E237 OF 2024  
CW GITHUA, J  
NOVEMBER 14, 2024**

**BETWEEN**

**SAMUEL KABERA MAINA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In his application dated 30<sup>th</sup> May 2024, the applicant implored this court to review his sentence imposed in Chief Magistrate's Court Muranga *Criminal Case No. E020 of 2024*.
2. The record of the trial court shows that the applicant was charged with the offence of threatening to kill contrary to Section 223 of the *Penal Code*. The particulars were that on 4<sup>th</sup> January 2024 at 23.30 hours, in Githunguri village, Muchungucha Location in Murang'a County, he threatened to kill Peter Maina Muratha with an axe.
3. When arraigned before the trial court, he admitted having committed the offence. He was then convicted on his own plea of guilty. He was sentenced to one year imprisonment.
4. When the application came up for hearing on 23<sup>rd</sup> October 2024, the applicant informed the court that his only complaint against the impugned sentence was that when sentencing him, the learned trial magistrate did not consider the time he had spent in lawful custody prior to the date he was sentenced. He urged me to revise the sentence to factor in the time he had spent in custody.
5. Learned prosecuting counsel, Ms Muriu, did not oppose the application. In her submissions, she agreed with the applicant that when imposing the sentence, the trial court did not indicate that it had considered the period the applicant had spent in lawful custody.



6. The law as prescribed in Section 333(3) of the *Criminal Procedure Code* (CPC) is that courts are required to take into account the period an accused person had spent in lawful custody when passing sentence.

This provision states as follows:

- (1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.
- (2) 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.

7. I have perused the record of the trial court and contrary to the applicants and the respondent's submissions, the record shows that the learned trial magistrate indicated that when passing sentence, he had considered the time the applicant had spent in lawful custody prior to date he was sentenced.

8. The offence of threatening to kill contrary to Section 223 of the *Penal Code* is a serious offence which attracts a maximum penalty of ten years imprisonment. In sentencing the applicant to one year imprisonment, the learned trial magistrate must have considered the period the applicant had been in custody as indicated on the court record and other mitigating factors including the fact that the applicant was a first offender. The sentence was in my view quite lenient considering the circumstances in which the offence was committed and penalty prescribed by the law. But since it is trite that sentencing is in the sole discretion of the trial court, I cannot interfere with the impugned sentence just because I am of the view that the applicant deserved a stiffer sentence.

9. In view of the foregoing, I do not find any legal basis for disturbing the sentence meted out by the trial court. The sentence was in accordance with the law and there is no indication on record that in passing the sentence, the learned trial magistrate made an error of law or fact or considered irrelevant factors or failed to consider relevant ones. The application therefore fails to meet the threshold for revision envisaged in Section 362 of the *Criminal Procedure Code*.

10. In the premises, it is my finding that this application lacks merit and it is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MURANG'A THIS 14<sup>TH</sup> DAY OF NOVEMBER, 2024.**

**HON. C. W. GITHUA**

**JUDGE**

In the Presence of:

The Applicant

Ms. Muriu for the Respondent

Ms. Susan Waiganjo, Court Assistant

