



**Muiruri v Republic (Criminal Appeal 92 of 2017)
[2024] KEHC 16626 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16626 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL APPEAL 92 OF 2017
A MSHILA, J
DECEMBER 6, 2024**

BETWEEN

PHILIP KAMAU MUIRURI APPLICANT

AND

REPUBLIC RESPONDENT

*(An Appeal from the Original Conviction and Sentence in Criminal
Case No.1357 of 2016 in the Chief Magistrate's Court at Kiambu)*

RULING

1. A brief outline of the case was that the Applicant Philip Kamau Muiruri was charged with Attempted Murder contrary to Section 202 as read with Section 205 of the Penal Code, Cap 63 Laws of Kenya.
2. The Applicant was convicted and was sentenced to serve a term of Twenty (20) years imprisonment. Being aggrieved with the trial court's decision the Applicant lodged the instant Appeal which he later partially abandoned the Appeal only on the ground of conviction and opted for a Revision of the commencement date of his sentence.
3. At the hearing hereof the Applicant was unrepresented whereas the Respondent was represented by Prosecuting Counsel Mr. Gacharia. Both parties made oral submissions; hereunder are the parties respective submissions.

Applicants' Case

4. The Applicant sought for revision of his sentence under the provisions of Section 333(2) of the Criminal Procedure Code. That the trial court failed to apply the aforesaid Section and ought to have backdated the commencement date to the day of his arrest which was 31st May, 2016.



5. To support his prayer for revision of the commencement date of the sentence the Applicant relied on the Charge Sheet and the Ruling on Sentence delivered on 25th May, 2017.
6. The Applicant prayed that in balancing mercy and justice his sentence be revised to commence effective from the aforementioned date of arrest;

Respondent's Case

7. In response Prosecuting Counsel for the State confirmed that the ruling on sentence was silent on the commencement date; and was not opposed to the prayer for the Revision of the date to commence from the date of the Applicants arrest.

Issues for Determination

8. After hearing the rival submissions this court has framed only one issue for determination which is as follows:-
 - i. Whether to consider the initial date of arrest as the commencement date of the sentence;

Analysis

Whether to consider the initial date of arrest as the commencement date of the sentence

9. The Applicant sought a revision of her sentence; she prayed that the provisions of Section 333(2) be invoked and for an order that the sentence imposed do commence from the date of her arrest.
10. Upon perusal of the trial courts Judgment on sentencing this court indeed notes that it is silent on the aspect of the date of arrest as being the commencement date of the sentence; the trial court only commented that the manner in which the offence was committed called for a deterrent sentence to the Applicant and any other person out there who may have the like mind set out; the Applicant had been denied bail and had been in remand since the date of his arrest; indeed the trial court ought to have gone further by adding that the period spent in remand from the date of arrest be deducted from the sentence term,
11. The provisions of Section 333(2) of the *Criminal Procedure Code* read as follows:-
 - “(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 of which it was pronounced, except where otherwise it is 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”.
12. The court record indicates that the Applicant was not granted bail as the safety of the main prosecution witnesses would have been in jeopardy, therefore the Applicant was remanded throughout the pendency of the trial.
13. Based on the provision of the Section 333(2) aforesaid the Applicant is indeed entitled to the benefits of the section for the time spent in remand during the pendency of the case.
14. This court will take into consideration the period spent in remand from the date he was arrested to the time of conviction and will avail the benefit of the provisions of Section 333(2) to the Applicant



therefore, the commencement of his sentence shall run from the date of his arrest which was the 31st May, 2016 as opposed to the date when he was sentenced.

Findings and Determination

15. For the foregoing reasons this court makes the following findings and determinations:-
- i. This court finds no good reason to warrant interfering with the sentence as it is found to be legal; and it is upheld.
 - ii. The sentence shall commence from the date of arrest being 31st May, 2016 as stated on the Charge Sheet. The period spent in remand be deducted from the imprisonment term.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 6TH DAY OF DECEMBER, 2024.

HON. A. MSHILA

JUDGE

In the presence of;

Sanja – Court Assistant

Kelwon – for State

Applicant - present in person

