



**Musila v DPP (Criminal Miscellaneous Application E067 of 2024)
[2024] KEHC 15422 (KLR) (5 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15422 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E067 OF 2024
S MBUNGI, J
DECEMBER 5, 2024**

BETWEEN

JACKSON MUSILA APPLICANT

AND

DPP RESPONDENT

RULING

1. The application dated 15th May, 2024 filed by the applicant seeks for sentence review in accordance to the provisions of section 333(2) of the Criminal Procedure Code to take into account the period spent in custody during trial.
2. The applicant was charged with the offence of grievous harm contrary to section 234 of the penal code and was sentenced to serve thirty (30) years imprisonment by the trial court.
3. He lodged a petition of appeal in Kakamega HCCRA 97 of 2018 against both conviction and sentence.
4. I have looked at the judgment delivered by the Honorable Justice D.S Majanja on 02.09.2019 whom in his judgment affirmed the conviction, quashed the sentence by the trial court of thirty years and substituted it with a sentence of fifteen (15) years imprisonment.
5. According to The Judiciary Sentencing Policy Guidelines 2023:

“Section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.



Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.”

6. 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. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
8. I have perused the trial court proceedings, the trial court judgment and the judgments in the High Court Appeal. In the court’s pronouncement, there is clearly no evidence that section 333(2) of the CPC was complied with.
9. I note that the applicant was first arraigned in court on 09.11.2017 for plea taking and was denied bond. He remained in remand throughout the trial until the date of sentencing by the trial court.

Disposition.

10. The court finds that the application has merit. The same is allowed.
11. the sentence of 15 years’ imprisonment to commence from 09.11.2017 when the applicant was arraigned in court and remanded to await his trial pursuant to section 333(2) of the CPC.
12. Right of appeal 14 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 5TH DAY OF DECEMBER, 2024.

S.N MBUNGI

JUDGE

In the presence of :

Accused person – present online

Court Prosecutor – Mbonzo

Court Assistant – Rono

