



**Ndirangu v Republic (Criminal Revision E340 of 2023)
[2024] KEHC 16623 (KLR) (6 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16623 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E340 OF 2023
A MSHILA, J
DECEMBER 6, 2024**

BETWEEN

SAMUEL GITAU NDIRANGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the Applicant Samuel Gitau Ndirangu was charged with Stealing Stock 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 Five (5) years imprisonment; being aggrieved with the trial court's decision the Applicant lodged this application on the revision of the commencement date of the 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 sentence under the provisions of Section 333(2) of the [Criminal Procedure Code](#), in 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 17th September, 2021.
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 3rd October, 2022.
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 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 the Applicant is entitled to the benefits of the provisions of Section 333(2) of the *Criminal Procedure Code*.

Analysis - Whether the Applicant is entitled to the benefits of the provisions of Section 333(2) of the Criminal Procedure Code.

9. The Applicant sought a revision of his sentence; he prayed that the provisions of Section 333(2) be invoked and for an order that the sentence imposed do commence from the date of his arrest.
10. 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 comments that the Applicant had a previous case of theft of cattle in the area and for that reason imposed a sentence of five (5) years imprisonment; 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. Upon careful perusal of the court record it reflects that the Applicant was granted cash bail on 20th September, 2021 which was paid by a Lucy Gitau on the same date; he therefore spent a period of three (3) days only in remand during 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 he was released on bail which period shall be deducted from his sentence.

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 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

Gacharia – for State

Applicant - Samuel present virtually from Kamiti Medium Prison

