



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT MOMBASA**

**PETITION NO. 48 OF 2019**

**ANTONY GITONGA KABUGI.....PETITIONER**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT**

**JUDGMENT ON RESENTENCING**

1. The Petitioner herein **ANTONY GITONGA KABUGI** was charged with the Offence of Manslaughter contrary to 205 of the Penal Code.
2. The particulars of the case were that **“on 30<sup>th</sup> July, 2010 at Shimazi police lines Mombasa District within Coast Province he unlawfully killed Mathias Muoka.”**
3. He was sentenced to 20 years imprisonment. Upon appeal to the High court, he was sentenced to 15 years imprisonment.
4. The Petitioner is now in this court pursuant to Section 333(2) of the Criminal Procedure Code, seeking for his conviction to be calculated from date of his arrest.
5. Ms. Wanjohi, learned counsel for the State submitted that the Petitioner is seeking for inclusion of the time spent in remand in his sentence. Counsel submitted that during the appeal to the High Court, the court noted that the Petitioner was released on bond on 15/8/2011. He absconded court and was taken to court on 28/5/2012 under warrant of arrest. The Petitioner had breached the law on bond pending trial. He was put back in remand due to his own mistake and therefore lost his right to have his sentence computed from the date of his arrest. Counsel submitted that the High Court had given its reasons for not computing the sentence as per Section 333(2) of the Criminal Procedure Code. Counsel submitted that the petition lacks merit and should be dismissed.
6. The Petitioner on his part submitted that this Court does consider the time he spent in remand to be part of his sentence as a right under the Constitution and Section 333(2) of the Criminal Procedure Code.
7. I have considered the application, the relevant law herein as well as the submissions by both the Applicants and the Respondent. Section 333(2) of the Criminal Procedure Code provides that:

**“(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”**

8. It is mandatory that the period during which an accused had been held in custody prior to being sentenced be taken into account in meting out the sentence. However, this issue arose in a court of coordinate jurisdiction but the computation was not granted. This means that the High Court had already deliberated on the issue and dismissed it. The High Court cannot now consider the same issue.
9. In the upshot, the Petition is devoid of merit and is hereby dismissed.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 11<sup>TH</sup> DAY OF MARCH, 2021.**

**E. K. OGOLA**

**JUDGE**

**Judgment delivered via MS Teams in the presence of:**

**Petitioner in person**

**Ms. Wanjohi for the DPP**

**Mr. Josephat Court Assistant**