



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NAIROBI**

**CRIMINAL REVISION CASE NO. 253 OF 2019**

**PATRICK ODIPO MUNIRA.....APPLICANT**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTION .....RESPONDENT**

**RULING**

The applicant, **PATRICK ODIPO MUNIRA**, filed this application on 7.10.2019. The same is an application for revision under section 333(2) of the criminal Procedure Code, Cap 75 Laws of Kenya. He seeks that his sentence be reviewed as to account for the period he remained in custody (remand) as he awaited the determination of his case. He had been sentenced to serve 4 years imprisonment on both counts I and II and 2 years imprisonment on count II. The sentences, passed on 19.9.2018 were ordered to run concurrently.

The prosecution has not objected to this application to have the period spent in custody be considered if the trial court failed to do so.

Section 333(2) of the criminal Procedure Code states;

*“Subject to provisions of section 38 of the Penal Code, every sentence shall be deemed to commence from, and to include the whole of the day on which it was pronounced, except when 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”.*

I have perused the sentencing provisions of the lower court. Same do not give any directions on the period the applicant spent in custody as he awaited the determination of his case. The trial court ought to have accounted for this period in the sentence.

The records of the lower court indicate that the applicant was first arraigned before the court on 12.3.2013. thought he was placed on bail, it was not until 7.8.2013 that he secured his release by posting a cash-bail. He was therefore in custody for a period of approximately 6 months.

Being entitled to this period being accounted for, I allow the applicants application (undated) and filed herein on 7.10.2019, and order that the applicant do serve the sentences imposed against him by the trial court less 6 months, a period he remained in custody awaiting the outcome of his trial. The said sentences were otherwise correctly ordered to run concurrently and shall remain so. It is so ordered.

**D. O. OGEMBO**

**JUDGE**

**5.3.2021**

**Court:**

Ruling read out in open court (on-line) in presence applicant and Ms. Akunja for the state.

**D. O. OGEMBO**

**JUDGE**

**5.3.2021**

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FROM: HIGH COURT APPELLATE SIDE

TO: GK. NAIROBI WEST @ GK.PRISON ALLO.

INFO: PHQ.

5<sup>TH</sup> MARCH 2021

**HCCR REVISION. NO. 253 OF 2019**

HIGH COURT CRIMINAL REVISION NO. 253 OF 2019 ORIGINATING FROM THE CHIEF MAGISTRATE'S COURT AT MILIMANI CRIMINAL CASE NO. 415 OF 2013. APPLICANT **ATHI/1100/018/LS PATRICK ODIPO MUNIRA** APPLICANT DO SERVE THE SENTENCES IMPOSED AGAINST HIM BY THE TRIAL COURT **LESS 6 MONTHS**, A PERIOD HE REMAINED IN CUSTODY AWAITING THE OUTCOME OF HIS TRIAL. THE SAID SENTENCES WERE OTHERWISE CORRECTLY ORDERED TO RUN CONCURRENTLY AND SHALL REMAIN SO. IT IS SO ORDERED.

**DEPUTY REGISTRAR**