



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 203 OF 2019

BAKARI MAGANGA JUMA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein **BAKARI MAGANGHA JUMA** was charged with the Offence of murder contrary to 203 as read with Section 204 of the Penal Code.
2. The particulars of the case were that, “**on 4th May, 2010, at Kariokor Majengo in Voi Township in present day Taita Taveta County, he murdered Beatrice Mwadima.**”
3. He was found guilty and sentenced to death. He appealed to the Court of Appeal which by its decision rendered on 29th April, 2016 allowed the appeal, quashed the conviction for murder and set aside the death sentence. The court substituted the charge with manslaughter contrary to Section 202 as read with Section 205 of the Penal Code and sentenced the Petitioner to 15 years’ imprisonment with effect from the date of the Petitioner’s conviction and sentence by the High Court.
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. The petitioner states that he spent three years in remand before he was convicted.
5. **Mr. Fedha**, learned counsel appearing for the State submitted offences of manslaughter do not carry such mandatory sentences and the court is at liberty to exercise its discretion depending on the circumstances of each case and mitigation of accused person. The court of Appeal considered the circumstance of the case and used its discretion to sentence the petitioner to 15 years imprisonment. Counsel submitted that the petitioner’s petition does not therefore qualify for resentencing under the **Muruatetu Case**.
6. However, the petitioner is by law entitled to benefit under section 333(2) of the Criminal Procedure Code which states 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.

7. It is mandatory that the period which an accused has been held in custody prior to being sentenced must be taken into account in meting out the sentence. Accordingly, the Petitioner’s sentence of 15 years shall run from the date of arrest, being 4th May, 2010.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 14TH DAY OF APRIL, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in Person

Ms. Wanjohi for DPP

Ms. Peris Court Assistant