



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

PETITION NO. 240 OF 2018

RAPHAEL NZOVU GOWA.....PETITIONER

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT ON RESENTENCING

1. The Petitioner herein RAPHAEL NZOVU GOWA was charged with the Offence of Grievous harm contrary to section 234 of the Penal Code.
2. The particulars of the offence were that **“on the 31st day of August 2014, at Mikindani area in Changamwe within Mombasa County, unlawfully assaulted and did grievous harm to Bahati Mwaka Mganza.”**
3. The Petitioner was found guilty and sentenced to 25 years imprisonment. When he appealed to the High Court, his sentenced was reduced to 12 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. **Mr. Fedha** learned counsel appearing for the State submitted that the Petitioner’s sentence of 12 years is sufficient and the same ought to start running from the time of conviction. Counsel submitted that the Judge of appeal ordered for the sentence to run from 7th July, 2015 being the date when the petitioner was sentenced by the trial court. Counsel prayed this court not to interfere with the appellate court decision or the terms and conditions on when the sentence will start to run.
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 petitioner 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 which an accused has been held in custody prior to being sentenced be taken into account in meting out the sentence. The Prosecution counsel submitted that this issue was discussed by the appellate court. I have had a chance to read the appellate court judgment and I have found out that this issue was not discussed.
9. The Court of Appeal in **Ahamad Abolfathi Mohammed & Another v Republic [2018] eKLR** stated that, **“The court while applying this provision held that by dint of section 333(2) of the Criminal Procedure Code, the courts during sentencing ought to take into account the period that they had spent in custody before they were sentenced.”**
10. The petitioner was arrested on 2nd September, 2014 and convicted on 7th July, 2015. Therefore, the computation of his 12 years’ sentence shall run from **2nd September, 2014.**

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 the DPP

Ms. Peris Court Assistant