



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

(CORAM: CHERERE-J)

PETITION APPLICATION NO. 13 OF 2020

BETWEEN

HUSSEIN SHUNE GALGALO.....1ST PETITIONER

JOSEPH KAMAU.....2ND PETITIONER

AND

REPUBLIC.....RESPONDENT

RULING

Introduction

- 1) The Petitioners were convicted in **ISIOLO CRIMINAL CASE NO. 90 OF 2015** for the offence of severing with intent to steal contrary to section 32A of the Kenya Communication Act of 2012. HUSSEIN SHUNE GALGALO the 1st Petitioner was also convicted for the offence of giving false information to a person employed in public service. Each Appellant was fined Kshs.5 million in count one and in default to serve 10 years' imprisonment. The first Appellant was also fined Kshs. 10,000/- in default to serve two years' imprisonment in the 2nd count.
- 2) The Petitioners' appeals to the High Court vide **MERU HIGH COURT CRIMINAL APPEAL NO. 99 and 100 OF 2015** was on 28.04.2017 dismissed in respect of count one.
- 3) Applicants have petitioned the court to consider the time they spent in custody before conviction which the state does not oppose.
- 4) Ms. Mbithe, learned counsel for the state opposed the application and urged the court to find that the sentence was lawful.

Analysis and Determination

- 5) 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.

- 6) The Court of Appeal in **Ahmad Abolfathi Mohammed & Another Criminal Appeal No.135 of 2016 (2018) eKLR** held thus:

“By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the

conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.”

7) Consequently, it is hereby ordered that the Petitioners’ sentences of 10 years shall run from 25th February 2015 when they were arrested.

DELIVERED AT MERU THIS 13th DAY OF May 2021

T. W. CHERERE

JUDGE

In the presence of-

Court Assistant	- Kinoti
1st Petitioner	- Present in person
2nd Petitioner	- Present in person
For the State	- Ms. Mbithe