

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. 280 OF 2019

OTIENO WANDERA YONAH.....1ST APPLICANT

VICTOR AKUMU MASIKANYA..... 2ND APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

RULING

The 2 applicants, **OTIENO WANDERA YONA** and **VICTOR AKUMU MASIKANYA** jointly filed an application herein on 16.10.2019 under certificate of urgency. On the face of it, the applicants did not indicate which provision of the law they came under. They only pleaded for review. However, in the affidavit in support of the application, they have both deponed that the application is brought under section 333(2) of the Criminal Procedure Code. They have asked that the period of 1 year, 7 months they took in custody awaiting trial be accounted for in the sentence.

In opposing the application, counsel for the state, Ms. Chege, submitted that the offences charged attract upto death sentence, whereas the applications were only sentenced to serve 5 years imprisonment. That the court dully considered the period taken in custody. She urged that this application be dismissed. The proviso to section 333(2) of the Criminal Procedure Code states;

“Provided that where the person sentenced under sub-section(1) has prior to such sentence, been in custody, the sentence shall take into account of the period spent in custody.”

I have considered the proceedings of the trial court. The sentencing proceedings of 28.11.2018 clearly show that the sentencing the applicants, the trial magistrate duly considered the mitigation of the applicants. The court also considered the period that the applicants had spent in custody awaiting determination of their case.

It is worth noting that whereas the offences for which the applicants were convicted and sentenced could be as severe as death sentence, the applicants were given imprisonment terms of 5 years. I find this to be both legal and lenient.

The court having considered the period the applicant’s spent in custody awaiting trial, I hereby find that this application of the applicants filed herein on 16.10.2019 lacks in any merit. I dismiss the same accordingly.

D. O. OGEMBO

JUDGE

11.5.2021.

Court:

Ruling read out in open court (online) in the presence both 1st and 2nd applicants

D. O. OGEMBO

JUDGE

11.5.2021.