



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL REVISION NO. 311 OF 2020

AGNES GAKII KANGANGI.....APPLICANT

VS.

REPUBLIC.....RESPONDENT

RULING

1. **AGNES GAKII KINGANGI** was charged with the offence of abducting a child under 14 years contrary to **Section 262** of the Penal Code, the offence of stealing contrary to **Section 275** of the Penal Code, demanding property with Menaces contrary to **Section 302** and the offence of handling stolen goods contrary to **Section 322(1)** of the Penal Code. After trial before the Senior Principal Magistrate's Court at Kikuyu, Agnes was convicted on count No. 1 and count No. 111. **She was sentenced on 23rd January, 2020 to serve 6 years on count No. I and 7 years on count No. III. Those sentences were to run concurrently.**

2. Agnes filed a revision application before this Court on 28th July, 2020. She seeks that the time she spent in custody during her trial be taken into account and she also seeks the court does review her sentence and order for her release.

3. The application for Agnes to be released from custody is not available. Agnes has not filed an appeal against sentence.

4. Her application for time spent in custody to be taken into account falls under the provisions of **Section 333(2)** of the Criminal Procedure Code which provides:-

“Subject to the provisions of section 38 of the Penal Code (Cap. 63), 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.”

5. In the case **ANTONY NDEGWA NGARI VS. REPUBLIC** Justice F. Muchemi had this to say of that Section:-

“6. The duty to take in account the period an accused person had remained in custody in sentencing (under Section 333(2) of the Criminal Procedure Code) was acknowledged by the Court of Appeal in AHAMAD ABOLFATHI MOHAMMED & ANOTHER VS. REPUBLIC [2018] eKLR. (See also BETHWEL WILSON KIBOR VS. REPUBLIC [2009] eKLR.)

7. It is therefore clear that 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 where it is not hindered by other provisions of the law.”

6. Agnes was before the trial court on 13th January, 2016 when she pleaded not guilty. She was granted bail on terms she was unable to meet and she remained in custody throughout her trial. She is therefore entitled to benefit from the provisions of **Section 333(2)** of the Criminal Procedure Code.

7. Accordingly, I make the following orders:-

· The sentence of **Agnes Gakii Kingangi** in Kikuyu Senior Principal Magistrate's Court Criminal Case No. 44 of 2016 shall be calculated to begin running from 13th January, 2016.

8. Orders accordingly.

RULING DATED AND DELIVERED AT KIAMBU THIS 14TH DAY OF OCTOBER, 2021.

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

For the Applicants: No appearance

For the Respondent : Mr. Kasyoka

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE