

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISUMU

MISC. CR. APPLICATION NO. E019 OF 2021

EVANS NYANG'AU GADNAR APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

JUDGMENT

The Applicant, **EVANS NYANG'AU GADNAR**, has invoked **Section 354** of the **Criminal Procedure Code**, seeking a review of the sentence which was handed down to him.

1. He told this Court that he was convicted for the offence of **Robbery with Violence** contrary to **Section 296 (2)** of the **Penal Code**. The trial court then sentenced him to suffer death as by law prescribed.
2. The Applicant told this Court that the death sentence was later "*substituted*" to 15 Years imprisonment.
3. He said that he had now spent 10 years in custody, since the time when he was arrested.
4. According to him, he had wasted his youthful days in jail, where he had stayed away from his parents and his family.
5. He requested the Court to order that the remaining duration of the sentence be served through a non-custodial sentence.
6. The Applicant also asked the Court to take into account the period of 8 months which he spent in custody, during the trial.
7. Although the Applicant was directed to file and serve the Judgment through which the High Court had substituted the death penalty with a sentence of 15 Years imprisonment, the Applicant failed to do so.
8. Secondly, the Applicant did not provide the Court or the Respondent with the record of the proceedings from the trial court.
9. In the absence of the proceedings from the trial court, this Court regrets that it is unable to verify the period, if any, that the Applicant spent in custody whilst he was still on trial. Accordingly, I am unable to order that 8 months be taken into account when the actual period of incarceration was being calculated by the Prison authorities.
10. I also find no basis in law for ordering that a sentence which had already been reviewed by another Judge of concurrent jurisdiction, be further reviewed.
11. In the result, the application is dismissed.

DATED, SIGNED and DELIVERED at KISUMU This 12th day of October 2021

FRED A. OCHIENG

JUDGE