



**REPUBLIC OF KENYA**

**HIGH COURT OF KENYA AT NAIROBI**

**MILIMANI LAW COURTS CRIMINAL DIVISION**

**HCC REV NO E349 OF 2021**

**JAMES MAOGA MATURI .....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. By a notice of motion application filed in court on 26<sup>th</sup> August 2021, the applicant is seeking for an order that, the court be pleased to review the three (3) years sentence meted upon him vide Criminal Case Number 867 of 2019, at the Chief Magistrate's Court. In so doing, the court should consider the period that he was in custody during the trial, as required under section 333(2) of the Criminal Procedure Code.

2. The application is supported by a brief affidavit sworn by the applicant. The Respondent did not respond to the application. Be that as it were, an application for review under provisions of section 362 and 364 of the Criminal Procedure Code can be heard and determined by the court without hearing the parties in it. Having considered the same, I find that, as background facts reveal, the applicant was charged in the aforesaid case, with the offence of theft of motor vehicle contrary to section 278A of the Penal Code. The case was fully heard and Judgment delivered on 6<sup>th</sup> July 2021. Subsequently, after considering the applicant's record and mitigation, he was fined Kshs300,000 in default; to serve three (3) years year's imprisonment.

3. I note from the factors considered before sentence that, the court does not indicate whether the period the applicant was in custody was considered. Be that as it were, the provisions of section 333(2) of Criminal Procedure Code bestows upon the court pronouncing the sentence to take into account, the period the accused or convict was in custody. It does not bestow upon the appellate court the power to do so; unless it is passing the sentence. Therefore, the plea by the applicant herein could only have been considered by the learned trial Magistrate in the subordinate court. Having said so, the applicant recourse lies in filing an appeal against sentence, if in his considered opinion, the sentence is harsh. In that case, I find that, the court has no jurisdiction to entertain the subject application and I dismiss or order it struck out on that ground.

It is so ordered.

**DATED DELIVERED VIRTUALLY AND SIGNED THIS 12TH DAY OF OCTOBER 2021.**

**GRACE L. NZIOKA**

**JUDGE**

**IN THE PRESENCE OF:**

**APPLICANT IN PERSON**

**MS KIBATHI FOR THE RESPONDENT**

**EDWIN OMBUNA – COURT ASSISTANT**