



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION 150 OF 2019**

**ALEX MUNGI MBUGUA .....APPLICANT**

**VERSUS**

**REPUBLIC ..... RESPONDENT**

**RULING**

The applicant herein, **ALEX MURIGI MBUGUA**, has vide an application dated 23.5.2019 pleaded with this court for revision of the sentence passed on him in Makadara Chief magistrate’s court, Cr. Case Number 1605 of 2017. The applicant seeks that the period he spent in custody pending determination of his trial be accounted for in the sentence.

This application is basically hinged on section 333(2) of the criminal procedure code. the said section states at its proviso;

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

I have considered the proceedings herein. The applicant was first arraigned in court on 25.7.2017. Though he was granted bail (on terms), he remained in custody till the late of sentence on 10.8.2018. This was a period of 1 year.

I have also considered the sentencing proceedings of the lower court. It is clear that the trial court considered the relevant provisions of the law on both charges, the mitigation that the applicant made, and also a report of the probation officer. In his mitigation, however, he never raised the issue of period he had spent in custody. The Honourable trial magistrate did not note that in the sentence the period spent in custody had been accounted for. The court ought to have accounted for the same as provided for in the law above.

It is for this reason that I find merit in the application of the applicant dated 23.5.2019. I allow the same and order that the applicant do serve his imprisonment term(s) as ordered by the trial court less the period of 1 year that he spent in custody awaiting determination of his case.

Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**17.11.2021.**

**Court:**

Ruling read out in court (on-line) no presence of the applicant (Nairobi West) and Ms. Ndombi for state.

**D. O. OGEMBO**

**JUDGE**

**17.11.2021.**

FROM: HIGH COURT APPELLATE SIDE

18<sup>TH</sup> NOVEMBER 2021

**HCCRREV. NO. 150 OF 2019**

HIGH COURT CRIMINAL REVISION NO. 150 OF **2019** ORIGINATING FROM THE CHIEF MAGISTRATE'S COURT AT MAKADARA CRIMINAL CASE NO. 1605 OF 2017. APPELLANT **ALEX MUNGI MBUGUA (NWP/1259/018/LS)** APPLICANT DO SERVE HIS IMPRISONMENT TERM(S) AS ORDERED BY THE TRIAL COURT LESS THE PERIOD OF 1 YEAR THAT HE SPENT IN CUSTODY AWAITING DETERMINATION OF HIS CASE.

**DEPUTY REGISTRAR**