



REPUBLIC OF KENYA

IN THE HIGH COURT

AT KERUGOYA

CRIMINAL REVISION NO. 159 OF 2020

(From original conviction and sentence in Criminal Case No. 27 of 2019 of the High Court at Kerugoya)

HILDA LILIAN NJERI KARANJA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. A brief background of the case was that the applicant **Hilda Lilian Njeri Karanja** was jointly charged with two others for the offence of **Robbery with Violence Contrary to Section 296 (2) of the Penal Code** and sentenced to death in **Kerugoya Chief Magistrate's Court Criminal Case No. 591 of 2016 on 6.5.2019**.

The Applicant appealed to the **High Court in Kerugoya in Criminal Appeal No. 26 of 2019** and the appeal was allowed.

Further, the High Court considered the 2nd count in the charge sheet in its judgement and convicted her on it. The second offence was **Attempted Robbery with Violence Contrary to Section 296 (2) of the Penal Code**.

She had appealed on both the conviction and the sentence. The conviction was upheld on both counts but the court reduced the sentence in view of the Supreme Court decision in **Francis Muruatetu -v- Republic (2017) eKLR**. The sentence was commuted from death penalty to a sentence of 7 years in prison, on the 4.10.2019.

2. **On the 27.7.2020, the Applicant filed this application seeking Revision of the seven years imprisonment downwards** to commence from the date she was arrested, on the 25.10.2016. She filed submissions on 19.11.2020, and the application. The application was argued interpartes on the 14/12/2020

3. The Prosecuting Counsel Mr. Ashimosi made oral arguments. He told the court that the applicant's case was an application for revision and not resentencing as evidenced in the submissions.

The issue before the court was therefore on when the sentence should commence. The Applicant argued that the re-sentencing ruling in **Kerugoya High Court Criminal Appeal No. 26 of 2019** did not take into consideration the period she had served in custody and prison before making its determination.

4. The applicant relied on the provisions of **Section 333(2) of the Criminal Procedure Code**. It states:

(2) 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. The applicant relied on the following decision:

Ahamad Abolfathi Mohammed & Another V. Republic [2018] eKLR

The appellants have been in custody from the date of their arrest on 19th June 2012. By dint of section 333 (2) of the Criminal

Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. The court held that: the first appellate court misdirected itself in that respect and should have directed the appellants' sentence of imprisonment to run from the date of their arrest on 19th June, 2012.

6. The applicant submitted on several mitigating grounds to plead her case for revision of the sentence to a lesser sentence. Though, she raised several mitigating circumstances to have her sentence reduced. Further, she had not prayed for the same in her Notice of Motion dated 22.11.2019.

The only issue raised in the application is for the sentence to commence from the date she was arrested, and detained in custody, which was on the 25/10/2016.

7. I have considered the relevant statutes and find that the court trial court ought to have taken into account the period the applicant was in custody in this case from the 25.10.2016. To that extent, and relying on the cited authorities, I find that the trial court misdirected itself while sentencing the applicant.

The Applicant spent three years in custody that the trial court failed to take into consideration while sentencing the applicant.

I shall therefore allow the application dated 22.11.2019 and reduce the seven years sentence by three years.

The upshot is that the applicants seven years sentence shall run from the date she was arrested and placed in custody being the 25.10.2016.

Orders accordingly.

DATED AND SIGNED THIS.....DAY OF.....2021

J. N. MULWA

JUDGE

DATED AND DELIVERED AT KERUGOYA THIS 14TH DAY OF DECEMBER 2021

R. M. MWONGO

JUDGE