



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CRIMINAL REVISION NO E232 OF 2021

PATRICK MWITI THURANIRAAPPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING ON REVISION

1. The Applicant/Offender in this case was convicted and sentenced to imprisonment for 7 years for the offence of grievous harm Contrary to Section 234 of the Penal Code on 17/4/2018. The issue is whether the sentence should be reduced by revision.
2. The DPP by submissions dated 29/11/2021 urged the “court to uphold in custodial sentence reason being that this is a prevalent offence in Nkubu and the custodial sentence would serve as a deterrent. The Applicant in this matter is neither fit for non-custodial sentence nor a reduced sentence considering the gravity of the offence and the fact that the applicant was not at all remorseful.”
3. The P3 described the injury suffered by the complainant as ‘Deep cut would about 10cmx2cm on the left side of the face i.e. from left cheek over the left eye, forehead and skull, x-ray showed no fracture.’
4. The applicant urged the court to take into account the period of his remand before conclusion of the trial in terms of *Section 333 (2)* of the Criminal Procedure Code.
5. The court notes that the applicant was first arraigned in court on 13/3/2017 upon his arrest on 11/3/2017 as shown on the charge sheet. He was in custody until the date of sentence on 17/4/2018 and his trial court didn’t make any order as to the Pre-trial detention.
6. While agreeing with the trial court and the DPP that the applicant could “have easily killed the complainant [and] in the circumstances the accused deserved a deterrent sentence,” the court failed to comply with the mandatory provisions of *Section 333(2)* of the Criminal Procedure Code that:-

“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

7. The trial court fell into an error of principle and the appellate court is in the authority of the cases cited by the DPP herein *Bernard Kinani Gicheru v.r (2002) e LKR, Shadrack Kipchoge Kogo v.R Eldoret Criminal Appeal No. 253 of 2003 and Patrick Muli Mukutha v.r [2019 e KLR*, entitled to interfere to correct the error of principle.

ORDERS

8. Accordingly, the sentence of the trial court is revised to the extent that the sentence of 7 years imprisonment shall commence on the 11/3/2017 when the applicant was arrested to await his trial.

Orders accordingly.

DATED AND DELIVERED THIS 15TH DAY OF DECEMBER, 2021

EDWARD M. MURIITHI

JUDGE

APPEARANCES:-

APPLICANT IN PERSON.

MS. NANDWA, PROSECUTION COUNSEL FOR THE RESPONDENT.