

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARISSA

CRIMINAL MISC. APPLICATION NO. 36 OF 2019

YASIN HAMISI BAWALA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. By application forwarded by Prisons Authorities on 2/4/2019 the applicant seeks review of sentence meted to him under section 333(2) of the Criminal Procedure Code and in the review exercised the court to take to account period spent in custody before sentence.
2. The applicant was charged with murder contrary to section 203 as read with section 204 of the Penal Code. He pleaded not guilty and matter was heard in full and he was found guilty, convicted of manslaughter and sentenced to serve 8 years' imprisonment.
3. The applicant did not appeal to the higher court. He now moves this court via section 333(2) of the Criminal Procedure Code.
4. In mitigation on 11/2/2018 his advocate Mr. Onono stated that he had been in custody for 5 years and urged court to consider the same period.
5. Thus when the court was awarding the applicant 8 years' imprisonment sentence was alive to the fact that the applicant had been in custody for 5 years.
6. The applicant had option to appeal against the sentence awarded by the judge.
7. Only the Court of Appeal can change an award in sentence made by a High Court judge. Thus court cannot apply the provisions of section 333(2) of the Criminal Procedure Code to overturn a decision of a judge of equal jurisdiction.
8. Thus application has no merit and is hereby dismissed.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 5TH DAY OF FEBRUARY, 2020.

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C. KARIUKI

JUDGE