

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

Coram: D. K. Kemei- J

MISC CRIMINAL APP. NO. 139 OF 2019

PAUL MUTUA MASILIA.....APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant was charged and convicted with the offence of being in possession of meat of Wildlife Species contrary to section 98 of the Wildlife Conservation and Management Act 2013. He was sentenced to pay a fine of Kshs 500,000/- in default to serve 2 years imprisonment and Kshs 2,000,000/- in default to serve 6 years imprisonment by the trial court and appealed to this court against sentence in which this court ordered the same to run concurrently.

2. He then filed the instant application seeking that the period he spent in custody should be considered.

3. Mr. Martin Mwangera, prosecution counsel, opposed the application and submitted that the applicant ought to have gone to the Court of Appeal and not this court.

4. The issue for determination is whether the court may review the sentence.

5. Section 333 (2) of the Criminal Procedure Code 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.”

6. It is the considered opinion of this court having had due regard to section 333 (2) of the Criminal Procedure Code that the applicant’s request for the period spent in custody before conviction be considered has merit. The lower court record indicated that the appellant was arrested on 16.8.2017 and remained in custody until his conviction on 31.5.2018. This court has discretion to entertain a review of its order if the requisite reasons are advanced. The review sought herein mainly relates to minor errors which do not go to the root of the case as it is only intended to allow the applicant enjoy his rights under section 333(2) of the Criminal Procedure Code. The applicant though entitled to proceed to the Court of Appeal as suggested by the Respondent has a right to approach this court on review.

7. In the result the Applicant’s application has merit and is allowed. The sentences imposed by the trial court and upheld by this court on the 27.3.2019 shall commence from the date of arrest namely 16.8.2017.

It is so ordered.

Dated and delivered at Machakos this 8th day of July,2020

D. K. Kemei

Judge