



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MALINDI

MISC. CRIMINAL APPL. NO. 73 OF 2019

RIZIKI CHARO MRANJA.....APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS..... RESPONDENT

(Revision application in respect of the decision of Hon. Obura (PM) in Kilifi Senior Principal Magistrate's Court Criminal Case No. 205 of 2011 dated 31st May 2013 imposing a 15 year sentence on the accused for the offence of manslaughter)

CORAM: Hon. Justice R. Nyakundi

Riziki Charo Mranja in person

Mr. Alenga for the DPP

RULING

The applicant, **Riziki Charo Mranja**, was arrested, charged and convicted with the offence of manslaughter under Section 202 as read with Section 25 of the Penal Code by a decision of **Hon. Obura (PM)** in Kilifi Senior Principal Magistrate's Court Criminal Case No. 205 of 2011 made on 31st May 2013. He was sentenced to fifteen (15) years imprisonment. He did not exercise his right to appeal.

He has now approached this Court seeking for a revision of his sentence on account of the Learned trial Magistrate not considering the duration of time he had spent incarcerated in remand. He avers that the time spent in remand before his eventual sentencing was 2 years and 3 months. That as of 25th November 2019 he had been behind bars for a period of 6 years 2 months since his sentencing. That the sentencing policy guidelines 2016 require that this time be taken into account.

His prayer is that the time spent in remand be considered as part of his sentence.

Determination

Section 333 of the Criminal Procedure Code provides:

“333 (1) A warrant under the hand of the Judge or Magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing Judge or Magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.

(2) Subject to the provisions of Section 38 of the Penal Code 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.”

The applicant was sentenced to fifteen (15) years. He was in remand for the two (2) years three (3) months of the duration of his trial. From the date of his sentencing on 31st May 2013 to now is he has been incarcerated for about seven (7) years and four (4) months. Considering the time the applicant spent in remand, he has been in custody for nine (9) years and seven (7) months.

In the upshot I make the following order:

(a). The sentence is hereby reviewed to include the period the applicant already served in remand to remain with from 31.5.2013.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 1ST DAY OF OCTOBER, 2020

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R. NYAKUNDI

JUDGE