

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

CRIMINAL APPLICATION NO. 66 OF 2020

DENNIS NTHENGE CHARLES.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant vide his application filed on 1.7.2020 is seeking to invoke section 333(2) of the Criminal Procedure Code for revision of sentence.
2. The Applicant seeks that the court makes orders that the 10-year sentence meted on him run from the date of arrest namely 13.1.2009. The applicant also seeks that his ten year sentence be replaced.
3. The issue for determination is whether the court may grant the order sought.
4. 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.”

5. I note that the charge sheet indicates that the applicant was arrested on 13.1.2009. In my ruling delivered on 8.6.2020, I gave the following ratio:

“The accused was arrested on 13/01/2009 and remained in remand custody for a period of four (4) years before he posted bail. He has been out on bond for about seven (7) years before his conviction on 30/04/2020. Taking into account the period spent in custody as well as the favourable pre-sentence report, I am of the view that a sentence of ten (10) years imprisonment is appropriate in the circumstances. Consequently, the accused is hereby ordered to serve Ten (10) years imprisonment from the date of conviction namely 30/04/2020.”

6. In view of the foregoing, it would be foolhardy to claim that the period spent in custody was not considered. It is expressly clear that this court while sentencing the applicant did consider the period spent in custody before passing the sentence of ten years’ imprisonment. The court having duly considered the period spent in remand custody then the present application is quite improper. I need to point out to the applicant that this court is now functus officio and the only recourse for the applicant is to move to the higher court namely the Court of Appeal for redress if need be.

7. In the result it is my finding that the Applicant’s application filed on 01.07.2020 lacks merit. The same is dismissed.

It is so ordered.

Dated and delivered at Machakos this 10th day of November, 2020.

D. K. Kemei

Judge