



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MACHAKOS**

**Coram: D. K. Kemei – J**

**CRIMINAL APPLICATION NO. 27 OF 2020**

**DANIEL MUTUNGA MUNYAO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant vide his application filed on 20.2.2020 is seeking to invoke section 333(2) of the Criminal Procedure Code for revision of sentence.
2. The applicant seeks that the court make orders that the sentence meted on him run from 22.11.2018.
3. The application was disposed of by way of oral submissions. The applicant pointed out to court that he was arrested on 22.11.2018 hence his sentence ought to run from the said date. Mr. Martin Mwongera, counsel for the respondent did not oppose the application.
4. The issue for determination is whether the court may grant the order sought.
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. Having had due regard to section 333 (2) of the Criminal Procedure Code I find that the request by the applicant has merit. I note that the charge sheet indicates that he was arrested on 22.11.2018 and there was no indication that the applicant was out on bond. Hence the computation of 12 months’ imprisonment in respect of count 1 and 12 months’ imprisonment in respect of count 2, which sentences were to run consecutively should run from 22.11.2018 which is the date of arrest.

7. The upshot of the foregoing observations is that the applicant’s application filed on 20.2.2020 has merit. The same is allowed. The sentences imposed against the applicant on 6.2.2020 shall commence from the date of arrest namely **22.11.2018**.

**It is so ordered.**

**Dated and delivered at Machakos this 9<sup>th</sup> day of November, 2020.**

**D. K. Kemei**

**Judge**