



**REPUBLIC OF KENYA**

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

**MISC CRIMINAL APPLICATION NO. 22 OF 2019**

**STEPHEN MUNGUKA MWENDANDU.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING ON REVISION**

1. By chamber summons application filed on 30<sup>th</sup> January, 2019 the applicant sought to move the court to revise the order made on the 15<sup>th</sup> January, 2019 sentencing him to 15 years imprisonment which was to run from the date of conviction with an order that his sentence run from the date of arrest under Section 333(2) of the Criminal Procedure Code. The State did not oppose his application for Revision.

2. The issue for determination is whether the court may grant the orders sought.

3. The operative section of the law in this regard is Sections 333 (2) of the Criminal Procedure Code that 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.”***

4. In the application, the applicant indicated that he was arrested on 4.2.2015 implying that he had been on remand ever since and has sought that the same be considered in the sentence. The prosecution has conceded to his request.

5. It is my considered opinion that this court having had due regard to Section 333 (2) of the Criminal Procedure Code that the application has merit. It is fair and just to ensure that the applicant who had been in custody from the date of arrest to conviction be allowed to benefit from the express provisions of section 333(2) of the Criminal Procedure Code.

6. Accordingly, this court finds that the computation of fifteen (15) years to which the applicant was sentenced vide the judgement that was delivered on 15<sup>th</sup> January, 2019 shall run from 4<sup>th</sup> February, 2015 when the Applicant was arrested as he remained in custody during the entire period of his trial. To that extent therefore the sentence of 15 years is now revised and which should now run from the 4<sup>th</sup> February 2015.

It is so ordered.

**Dated, Signed and Delivered at Machakos this 12<sup>th</sup> day of June, 2019.**

**D.K. KEMEI**

**JUDGE**