

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

CRIMINAL APPEAL NO. 130 OF 2017

JULIUS MUTUA ILELU.....APPELLANT/APPLICANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The applicant was charged and convicted with the offence of burglary contrary to Section 304(1) (b) of the Penal Code and stealing contrary to Section 279(b) of the Penal Code. He was sentenced to 7 years imprisonment in respect of burglary and 4 years imprisonment in respect of stealing which were to run concurrently. He later lodged an appeal against sentence which was dismissed by this court on the 29th October 2018. He has now approached this court for review of sentence under section 333(2) of the Criminal Procedure Code Act.

2. The state has not opposed the application.

3. The application was disposed of by way of oral submissions. The appellant submitted that his application should be allowed and the court ought to take into consideration the time he spent in custody. Mr. Cliff Machogu, Prosecution Counsel, reiterated the submissions of the Appellant.

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

5. The prayer sought is governed by Section 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.”

6. It is the considered opinion of this court having had due regard to Section 333 (2) of the Criminal Procedure Code that the appellant’s application is meritorious.

7. Accordingly, this court finds that the computation of the sentence that the appellant was sentenced to shall run from the date when the Appellant was arrested, to wit 4.11.2016 as he remained in custody during the entire period of his trial.

It is so ordered.

Dated and delivered at Machakos this 19th day of September, 2019.

D. K. Kemei

Judge