



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO 88 OF 2018**

**MATTHEW MULINGE MUTISO.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

**RULING**

1. The Appellant was charged and convicted with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. He was sentenced to death and was later resented by the magistrate's court to 20 years imprisonment to run from the date of conviction. He has now appealed to this court and maintains that the court did not take into account section 333(2) of the Criminal Procedure Code Act regarding the period spent in remand custody.

2. The appeal was disposed of by way of oral submissions. The appellant submitted that his application should be allowed as he has since reformed while serving sentence in prison. He presented certificates indicating that he gained skills in Welding as well as a course on alternative to violence.

3. Mr. Cliff Machogu, prosecution Counsel, conceded to the appeal and submitted that the sentence ought to run from the date of arrest namely the 24.11.2001.

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

5. The prayer sought is hinged on 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 request has merit. As he spent in custody throughout the period of trial up to conviction and sentence, he is entitled to claim relief under section 333 (2) of the Criminal Procedure Code. Hence the trial court ought to have ordered that the sentence do run from the date of arrest namely 24.11.2001.

7. Accordingly, this court finds that the computation of twenty (20) years that the appellant was resented to shall run from the date when the Appellant was arrested as he remained in custody during the entire period of his trial. To this extend the appellant's appeal succeeds. The trial court's sentence is hereby interfered with by substituting with an order that the 20 years imprisonment on resentencing shall commence from the date of arrest namely 24.11.2001.

It is so ordered.

**Dated and delivered at Machakos this 16<sup>th</sup> day of September, 2019.**

**D. K. Kemei**

**Judge**