



**REPUBLIC OF KENYA**

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

**CRIMINAL APPEAL NO. 67 OF 2019**

**PETER OWUOR ADOKO.....APPELLANT**

**VERSUS**

**REPUBLIC.....PROSECUTOR**

***(Being an Appeal against conviction and sentence from original Bondo***

***PM CR Case No. 1033 of 2019 dated 14.8.2019 before Hon. E.N. Wasike – S.R.M.)***

**JUDGMENT**

1. The appellant **Peter Owuor Adoko** was convicted and sentenced to serve 10 years imprisonment vide Bondo Principal Magistrate's Court, Criminal Case No. 1033/2019, for the offence of **Manslaughter contrary to Section 202 as read with Section 205 of the Penal Code**. This was after a full trial. The impugned decision subject of this appeal was delivered on 14.8.2019.
2. He lodged this appeal dated 23.8.2019 before this court on an unnamed date. However, it is the fault of the registry not to receive the appeal with the date stamp and not the mistake of the appellant.
3. The appellant now informs the court that he is satisfied with the conviction only that his sentence be considered to be from the date of his arrest. The trial initially commenced in the High Court where the appellant had been charged with the offence of murder which was reduced to Manslaughter and the case remitted to the Magistrate's Court for trial.
4. I have considered the appeal by the appellant and the application for withdrawal of the appeal against conviction and reconsideration of the sentence.
5. I am satisfied that the appellant is entitled to the Orders prayed orally before the Court. The appeal against conviction is hereby marked as withdrawn on the appellant's own oral application.
6. As against sentence, I have perused the trial Court record and I established that the appellant was, as per the charge sheet signed by OCS Bondo Police Station on 1.11.2018, arrested on 20.1.2017. That being the case, the appellant had been in remand up to 14.8.2019 when he was sentenced to serve 10 years imprisonment, been in remand for a period of 2 years and 3 months, as he was not on bond, although he was granted bond of KShs.300,000 plus one surety of similar amount but the record does not show that he was ever released or that his sureties were approved.
7. Under **Section 333 (1) of the Criminal Procedure Code**, a warrant under the hand of a Judge or Magistrate by which a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing Judge or Magistrate and shall be full authority to the officer in charge of the Prison and to all other person for carrying into effect the sentence described in the warrant, not being a sentence of death. Under section 333 (2) of the Criminal Procedure Code, Subject to the Provision of **Section 38 of the Penal Code**, 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 Sub-Section (1) has prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
8. Section 38 of the Penal Code is on escaped convict and it provides that when sentence is passed under this Code on an escaped convict, that sentence:

***(a) If of death, or fine, shall subject to the provisions of this Code, take effect immediately;***

***(b) If of imprisonment, shall run consecutively or concurrently, as the Court shall Order, with the unexpired portion of the sentence which the convict was undergoing when he escaped.***

9. In this case, there is no evidence that the appellant had escaped from lawful custody.

10. Accordingly, I find and hold that following his conviction for manslaughter, his sentence ought to have run from the date of his arrest and the time spent in custody as contemplated in **Section 333(2)** the proviso thereof to the **Criminal Procedure Code**.

11. For that reason, the appeal against conviction having been withdrawn by the appellant, I hereby allow this appeal against sentence and set aside the sentence imposed on the appellant and substitute it with a prison term of 10 years to be calculated from 20.1.2017.

12. Orders accordingly.

**Dated, Signed and Delivered at Siaya this 20<sup>th</sup> Day of November, 2019.**

**R.E. ABURILI**

**JUDGE**