

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.643 OF 2018

FRANCIS CHEGE MUTHEE.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Francis Chege Muthee was initially charged and convicted of the offence of **robbery with violence** contrary to **Section 296(2)** of the **Penal Code**. The particulars of the offence were that on 19th June 2009 at Mbari ya Njiiru in Nairobi County, the Applicant, while armed with an offensive weapon, namely a toy pistol, robbed Dickson Maina Kamau of his mobile phone make Nokia 6060 and at the time of the robbery threatened to use actual violence to the said Dickson Maina Kamau (the complainant). The Applicant's conviction was set aside but a retrial was ordered. In the retrial which commenced on 16th June 2014, the Applicant was convicted of the lesser charge of stealing from a person contrary to **Section 279(a)** of the **Penal Code**. He was sentenced to serve seven (7) years imprisonment on 13th July 2017.

The Applicant applied to this court to have the sentence revised. His main ground was that the trial court did not take into consideration the fact that he was in remand custody for a period of three (3) years prior to his conviction. The court did also not take into account the fact that he had spent sometimes in prison in the vitiated trial that resulted in the order of the retrial being made. Mr. Momanyi for the State was not opposed to the application for the court to take into consideration the period that the Applicant was in remand custody. This court agrees with the Applicant that the period that he was in remand custody ought to have been taken into consideration before he was sentenced to serve a further period in custody. That requirement is not an option. It is provided under **Section 333(2)** of the **Criminal Procedure Code**.

Taking into consideration the entire circumstances of the charge that the Applicant was convicted, and the period that the Applicant was in lawful custody, this court is of the view that the Applicant has been sufficiently punished. His custodial sentence is commuted to the period served. He is ordered set at liberty forthwith unless otherwise lawfully held. It is so ordered.

DATED AT NAIROBI THIS 4TH DAY OF OCTOBER 2018

L. KIMARU

JUDGE