



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

MISC. CRIMINAL APPLICATION NO.68 OF 2017

DAVID NGANGA KARANJA.....  
APPLICANT

VERSUS

REPUBLIC.....  
RESPONDENT

RULING

The Applicant, David Nganga Karanja was convicted of the alternative charge of **handling suspected stolen property** contrary to **Section 322(1)** of the **Penal Code**. He was sentenced to serve five (5) years imprisonment. The Applicant was sentenced on 31<sup>st</sup> May 2016. He has applied to this court to take into consideration the period that he was in remand custody before his conviction. He has pleaded with the court to direct that the sentence that was imposed upon him by the trial magistrate to run from 13<sup>th</sup> June 2014 when he was placed in remand custody. During the hearing of the application, the Applicant urged the court to take into consideration the fact that during the period that he had been in lawful custody, he had learnt his lesson, was remorseful and pleads with the court to exercise leniency on him. Ms. Kimiri for the State opposed the application. She submitted that the offence that the Applicant was convicted attracted a maximum custodial sentence of fourteen (14) years imprisonment. The custodial sentence of five years imprisonment that was imposed upon the Applicant was lenient in the circumstances. She urged this court to disallow the application taking into consideration the short period that the Applicant has served the sentence.

This court has considered the Applicant's plea for reduction of sentence. The basis of the Applicant's application is that he wishes the court to take into consideration the period that he was in remand custody before he was convicted and sentenced to serve the custodial sentence by the trial magistrate. This court has perused the proceedings of the trial court. It was clear to this court that, indeed, the trial court did not take into consideration the period that the Applicant was in remand custody before he was convicted and sentenced to serve the custodial sentence. Under Paragraph 7.10 of the **Sentencing Policy Guidelines** issued by the Judiciary:

***“The proviso to Section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed.”***

In the present application, it was clear that if the trial court had taken into consideration the period that the Applicant was in remand custody, most probably it would have sentenced the Applicant to serve a less severe sentence. In the premises therefore, this court finds merit with the Applicant's application as a result of which the custodial sentence imposed upon the Applicant 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 18<sup>TH</sup> DAY OF JULY 2017

L. KIMARU

**JUDGE**