

**IN THE COURT OF
APPEAL AT KISUMU**

(CORAM: ASIKE-MAKHANDIA, OMONDI & KIMARU, JJ.A)

CRIMINAL APPEAL NO. 332 OF

2019 BETWEEN

GEOFREY AKUNGA KERORO.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal against the judgment of the High Court of Kenya at Nyamira (E. N. Maina, J.) dated 20th December, 2018

in

HCCRA No. 42 of 2015)

JUDGMENT OF THE COURT

1. This is a first appeal arising from the judgment of the High Court of Kenya at Nyamira (Maina, J.) delivered on 20th December, 2018, in Criminal Case No. 42 of 2015. The appeal is against sentence only.
2. A brief background to this appeal is that the appellant was charged before the trial court with the offence of **murder** contrary to **Section 203** as read with **Section 204** of the **Penal Code**. The particulars of the offence alleged that on 5th July, 2010, at Itibo Location, Bosianga II Sub-Location, in Nyamira County, the appellant murdered **Yunia Nyakerario Keroro**.
3. The appellant denied the charge after which a full trial ensued, with the prosecution calling seven witnesses, while the appellant elected to give an unsworn statement in his

defence.

After full trial, the appellant was found guilty as charged.
Upon

his conviction, the appellant was sentenced to serve twenty (20) years imprisonment.

4. In his appeal before us, the appellant challenges the custodial sentence imposed by the trial court on grounds that the learned Judge failed to consider the nine (9) year period spent by the appellant in remand custody prior to the conclusion of the trial and his conviction.
5. It was the appellant's submission that although the trial court noted in the sentencing notes that the appellant had spent nine years in remand custody, the trial court failed to specify when time would start running, with respect to the appellant's custodial sentence that was imposed. The appellant urged that the proviso to **Section 333(2)** of the **Criminal Procedure Code** requires the Court to take into account time already served, if a convicted person was in remand custody. He was of the view that the trial court failed to compute the time he spent in remand custody when awarding his custodial sentence.
6. The appeal was opposed. Learned Prosecution Counsel **Mr. Mwangi** submitted that the sentence imposed by the trial court was commensurate to the offence committed. He submitted that the sentence imposed was not the maximum sentence provided by the law, and that the trial court took into consideration the nature and circumstances of the offence. He explained that that the time spent by the appellant in remand custody was considered when the trial Court meted out the custodial sentence.

7. We have carefully considered the record of appeal, the submissions by both parties, and the law. This is an appeal against the sentence. Notably, the appellant has not contested the sentence imposed on him, but rather prays that the time he was in remand custody prior to his conviction be taken into account.
8. The conditions upon which the appellate court may interfere with the sentence of a trial court were set out in the case of **Bernard Kimani Gacheru vs. Republic [2002] eKLR** where this Court held as follows:

“It is now settled law, following several authorities by this Court and by the High Court, that sentence is a matter that rests in the discretion of the trial court. Similarly, sentence must depend on the facts of each case. On appeal, the appellate court will not easily interfere with sentence unless, that sentence is manifestly excessive in the circumstances of the case, or that the trial court overlooked some material factor, or took into account some wrong material, or acted on a wrong principle. Even if, the Appellate Court feels that the sentence is heavy and that the Appellate Court might itself not have passed that sentence, these alone are not sufficient grounds for interfering with the discretion of the trial court on sentence unless, anyone of the matters already states is shown to exist.”

9. As stated earlier in this judgment, the appellant challenged the sentence awarded by the trial court on the ground that the trial court failed to consider the nine years he spent in

custody while

on trial. **Section 333(2)** of the **Criminal Procedure Code** directs that such time spent in remand custody shall be computed in a convicted person's custodial sentence. The said section provides as follows:

“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.”

10. We have perused the trial court record. The trial court noted as follows in the pre-sentencing notes:

“The nature and circumstances of this offence are serious. The accused deliberately and most cruelly took away the life of his step-mother. The offence attracts a death sentence but this court has considered that the accused is a first offender, and also that he has been in custody for nine years. Accordingly, but noting that he is not remorseful he shall be sentenced to serve twenty (20) years imprisonment.” (Emphasis ours)

11. It is clear from the trial court comments that the nine years the appellant spent in custody prior to his sentence was considered by the trial court in computing his sentence. The trial court did not mete out the maximum sentence provided by the law which is death, but rather settled on a reduced custodial sentence of twenty (20) years, after considering the appellant's mitigation, as well as time spent in remand

custody prior to his conviction. The sentence was therefore legal and properly imposed.

12. In the premises, the appellant's appeal lacks merit and is hereby dismissed.

13. Orders accordingly.

Dated and delivered at Kisumu this 21st day of November, 2025.

ASIKE-MAKHANDIA

.....
... JUDGE OF APPEAL

H.A. OMONDI

.....
.. JUDGE OF APPEAL

L. KIMARU

.....
. JUDGE OF APPEAL

I certify that this is a true copy of original.

DEPUTY REGISTRAR.