

**IN THE COURT OF
APPEAL AT KISUMU**

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

**CRIMINAL APPEAL NO. E101 OF
2021 BETWEEN**

ALEX MUKWEYI.....APPELLANT

AND

REPUBLIC.....RESPONDENT

(Being an appeal from the Judgment of the High Court of Kenya at Kakamega (Njagi, J.) dated 30th July, 2020

in

HCCRA No. 42 of 2014)

JUDGMENT OF THE COURT

1. This is a first appeal arising from the Judgment of the High Court of Kenya at Kakamega (Njagi, J.) delivered on 30th July, 2020, in Criminal Case No. 42 of 2014. The appeal is against sentence only.
2. A brief background of this appeal is that the appellant, **Alex Mukweyi**, was charged 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 31st July, 2014, at Nabirima Village, Bulupi Area of Shikutse Sub-Location, in Kakamega North District of the Kakamega County, the appellant unlawfully murdered **Zipporah Nafula**.

3. The appellant denied the charge after which a full trial ensued, with the prosecution calling five witnesses, while the appellant electing to give a sworn statement in his defence. The appellant was alleged to have murdered his infant step-daughter, aged eight months, who had been left under his care on the material date. After full trial, the appellant was found guilty as charged. Upon his conviction, he was sentenced to serve fourteen (14) years imprisonment.
4. In his appeal before us, which is on sentence only, the appellant challenges the custodial sentence imposed by the trial court on the sole ground that the learned Judge failed to consider the period spent by the appellant in remand custody when computing his sentence. It was the appellant's submission that he has been in custody since 10th June, 2014, and that he was sentenced by the trial court on 6th October, 2021.
5. The appeal was not opposed by the respondent.
6. We have carefully considered the record of appeal, the submissions by both parties, and the law.
7. As stated earlier in this Judgment, the appellant challenged the sentence meted by the trial court on the ground that the trial court failed to consider the seven 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 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.”

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

“I have considered the circumstances of the commission of the offence, the mitigation, the probation report, the fact that the accused is a young man who has been in custody since 2014. I shall in the circumstances, sentence him to serve 14 years in prison. He has a right of appeal within 14 days.” (Emphasis ours)

9. It is clear from the learned Judge's sentencing notes that the period the appellant spent in custody prior to his sentencing was considered in computing his sentence. The learned Judge did not impose on the appellant the maximum sentence provided by the law which is the death penalty, but rather settled on a reduced custodial sentence of fourteen

(14) years, after considering the circumstances of the case,
the appellant's

mitigation, the probation report, as well as the fact that the appellant had been in custody since 2014, prior to conviction and sentence. The sentence was therefore legally and properly imposed, in line with the proviso to **Section 333(2)** of the **Criminal Procedure Code**. The trial Judge took into consideration the period the appellant was in remand custody hence the relative lenient custodial sentence.

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

Dated and delivered at Kisumu this 13th day of March, 2026.

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.