

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT VIHIGA

CRIMINAL MISCELLANEOUS APPLICATION NO E025 OF 2024

**AMOS MUSHEVE ALIAS JACKSON NGONYA.....
.....APPLICANT**

VERSUS

**REPUBLIC.....RESPONDEN
T**

RULING

INTRODUCTION

1. The Applicant herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. Njagi J who was seized of the matter convicted him on 31st July 2019. Musyoka J took over the matter from the said Learned Judge and found that the Applicant could benefit from a custodial sentence. He meted on him twenty-five (25) years imprisonment.
2. On 30th January 2024, the Applicant filed a Notice of Motion Application dated 25th January 2024 seeking for a review of sentence. In its decision of 24th June 2025, this court dismissed his said application for lack of merit. It, however, stated that he was at liberty to move the court pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) once the court file herein and/or typed proceedings had been availed.
3. The Respondent was not opposed to the Applicant's application. Hence, both parties did not file Written Submissions. This Ruling is, therefore, based on the Applicant's affidavit evidence.

LEGAL ANALYSIS

4. Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides that:-

“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”
(emphasis court).

5. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

Time already spent in prison by the convict...”

6. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in the case of **Ahamad Abolfathi Mohammed & Another vs Republic[2018]eKLR.**

7. A perusal of the Trial Court's file indicated that the Applicant was first arraigned in court on 8th June 2018. Although he was granted bond/bail, he did not seem to have posted the same. He was sentenced on 3rd June 2021.
8. A perusal of the decision in sentencing by Musyoka J indicated that he did not pronounce himself on the period that the Applicant spent in custody during trial. This court took judicial notice that the learned judge clarified when a sentence should start. In the case of **Lawrence Chamwada vs Republic [2020] KEHC 4559 (KLR)**, he rendered himself as follows:-
- "In the spirit of *Francis Karioko Muruatetu & Another vs Republic [2017] eKLR*, I shall quash the sentence of death that was imposed on the Petitioner by the trial court, and confirmed by the High Court. I shall substitute that sentence with one of thirty (30) years imprisonment, to run from the date of conviction on 31st January 2014 (emphasis court). It is so ordered."**
9. As the Learned Judge did not address himself to the said period herein and it was not clear to this court if he considered the said period before he meted upon the Applicant the sentence of twenty five (25) years imprisonment, this court took the view that it would not be sitting on appeal of his decision if it granted the Applicant the said period. This court, therefore, found and held that the period the Applicant remained in remand as his trial was ongoing ought to be taken into account while computing his sentence.

DISPOSITION

10. For the foregoing reasons, the upshot of this court's decision was that the Applicant's application pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) was merited. However, his conviction and sentence save for the application under Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) be and are hereby upheld as they were both safe.
11. For the avoidance of doubt, the period that the Applicant spent in custody during trial between 8th June 2018 and 2nd June 2021 be and is hereby taken into account while computing his sentence pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
12. It is so ordered.

DATED and **DELIVERED** at **VIHIGA** this **24th** day of **March** 2026

J. KAMAU
JUDGE