



REPUBLIC OF KENYA



KENYA LAW
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**Mukuhi v Republic (Criminal Revision E005 of 2025)
[2025] KEHC 3868 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3868 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E005 OF 2025
A MSHILA, J
MARCH 28, 2025**

BETWEEN

DIANA MUKUHI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. A brief outline of the case was that the Applicant Diana Mukuhi was charged jointly with others for the offence of Stealing contrary to Section 268 as read with Section 275 of the [Penal Code](#).
2. The Applicant who was the 3rd Accused initially pleaded 'Not Guilty' and changed her plea on 20th November, 2024 and pleaded guilty and was convicted and sentenced to serve a term of Twelve (12) months imprisonment with an option of a fine of Kshs.50,000/= . Being aggrieved with the trial court's omission to deduct the period spent in remand from the date of her arrest the Applicant lodged this application seeking that she be allowed to benefit from the provisions of Section 333(2) of the [Criminal Procedure Code](#).
3. At the hearing hereof, the Applicant was unrepresented whereas the Respondent was represented by Prosecuting Counsel Mr. Gacharia. Both parties made oral submissions. Hereunder are the parties respective submissions;

Applicants' Case

4. The Applicant sought for revision of sentence under the provisions of Section 333(2) of the [Criminal Procedure Code](#); that the trial Court failed to apply the aforesaid section and ought to have backdated the commencement date to the day of her arrest which was 23rd March, 2024.
5. To support her prayer for revision of the commencement date of the sentence the Applicant relied on the Charge Sheet and the Ruling on Sentence dated 20th November, 2024.



6. The Applicant prayed that in balancing mercy and justice her sentence be revised to commence effectively from the aforementioned date of arrest;

Respondent's Case

7. In response Prosecuting Counsel for the State confirmed that the sentence was silent on the commencement date, and was not opposed to the prayer for the revision of the date to commence from the date of the Applicants arrest.

Issues For Determination

8. After hearing the oral submissions this court has framed only one issue for determination which is as follows;

- i. Whether to consider the initial date of arrest as the commencement date of the sentence.

Analysis

Whether to consider the initial date of arrest as the commencement date of the sentence;

9. The Applicant sought a revision of her sentence; she prayed that the provisions of Section 333(2) be invoked and for an order that the sentence imposed do commence from the date of her arrest.
10. The provisions of Section 333(2) of the *Criminal Procedure Code* reads as follows;

“(2) 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 of which it was pronounced, except where otherwise it is 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”.

11. The court record indicates that on the 25th March, 2024 the Applicant was granted very lenient cash bail terms which she did not manage to raise and was remanded throughout the pendency of the trial period.
12. Upon perusal of the trial Courts ruling on sentence this court indeed notes that it is silent on the aspect of the date of arrest as being the commencement date of the sentence. Based on the provision of the Section 333(2) aforesaid this court is satisfied that the trial court made an error when it did not take into consideration the period that the Applicant may have spent in remand from the date of arrest. This court is satisfied that the applicant is entitled to benefit from the provisions of Section 333(2) of the *Criminal Procedure Code*.

Findings And Determination

13. For the foregoing reasons this court makes the following findings and determinations;
 - i. The application is found to be with merit and it is hereby allowed; the sentence shall commence from the date of arrest being 23rd March, 2024.
 - ii. The term is hereby deemed as having been fully served. The Applicant be set at liberty forthwith unless otherwise lawfully held.

Orders accordingly.



DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 28TH DAY OF MARCH, 2025.

HON. A. MSHILA

JUDGE

In the presence of:

Sanja – Court Assistant

Miss Mugambi holding brief for Mr. Gacharia for the State

Applicant - present in person from Langata Womens Prison.

