



REPUBLIC OF KENYA



Mungai v Republic (Petition E027 of 2022) [2025] KEHC 3888 (KLR) (27 March 2025) (Ruling)

Neutral citation: [2025] KEHC 3888 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
PETITION E027 OF 2022
EM MURIITHI, J
MARCH 27, 2025**

BETWEEN

JUDITH MUKAMI MUNGAI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The petitioner seeks sentence computation in compliance with Section 333 (2) of the *Criminal Procedure Code* and for an order that the period of sentence commence from the date of arrest. On 18th May, 2015 the accused person was charged with an offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*.
2. The particulars of the offence are that on 30th April, 2015 at Mombao Slum in Kanjuu Sub-location within Kirinyaga County she murdered Francis Gichobi Ndambiri.
3. On 13th March, 2019 in Criminal Case No. 10 of 2015, she entered into a plea bargain and pleaded guilty to the offence of Manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. The accused was convicted for manslaughter and sentence to 15 years' imprisonment on 25th March, 2019.
4. After conviction and sentence, she lodged a review in the High Court at Kerugoya Criminal Revision No. 2 of 2020. The application was dismissed on 19th November, 2020. The petitioner claims that her sentence had not taken into account the time spent in custody while undergoing trial as required under sections 333(2) of the *Criminal Procedure Code*. Further, that her right to equal benefits and equal protection of the law under article 27(1) of *the Constitution* had been violated.
5. The petitioner was arrested on the 29th April, 2015, took plea 14th May, 2015 and on the 25th March, 2019 sentenced to serve 15 years' imprisonment. The period spent in custody was 4 years. Section 333(2) of the *Criminal Procedure Code*, obliged the court to take into account the period that the accused had spent in custody before they were sentenced.



6. I respectfully agree with Odunga J. (as he then was) in *Jona & 87 others v Kenya Prison Service & 2 others (Petition 15 of 2020)* [2021] KEHC 457 (KLR) (18 January 2021) (Judgment) in holding that offenders “who were sentenced in violation of the said section are entitled to have their sentences reviewed by the High Court in order to determine their appropriate sentences. (c)A declaration that section 333(2) applies to the original sentence as well as the sentence imposed during resentencing.”
7. The petitioner was entitled to have the period that she had spent in remand considered or factored in the sentence. This was not done. The State conceded to the application. The record shows that she was in remand custody for almost four (4) years from 10/5/2015 to the date of sentence on 25/3/2019. The same should taken into account in her sentence of imprisonment for 15 years.

Orders

8. Accordingly, for the reasons set out above, the Court makes an order that sentence of imprisonment for 15 years shall commence on 10th May 2015 when the Petitioner was arraigned in Court to await her trial.

Orders accordingly.

DATED AND DELIVERED THIS 27TH DAY OF MARCH 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Ms. Applicant present in person.

Mr. Mamba for the DPP/Respondent.

