



**Kariuki v Republic (Miscellaneous Criminal Application
E090 of 2024) [2025] KEHC 5523 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5523 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E090 OF 2024
DKN MAGARE, J
APRIL 30, 2025**

BETWEEN

EDWIN KIBURI KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a ruling over an application filed on 21/9/2024 seeking the revision of sentence to consider time spent in custody pursuant to Section 333(2) of the [Criminal Procedure Code](#). The Applicant also seeks a more lenient sentence.
2. The application is supported by the affidavit of the Applicant, and it was deposited in material as follows:
 - a. The Applicant was convicted of robbery with violence contrary to section 296(2) of the [Penal Code](#) and sentenced to 10 years imprisonment.
 - b. The Applicant was arrested on 17.2.2021. He was in custody for 3 years, 2 months, and 23 days before sentencing.
 - c. The time spent in custody was not considered during sentencing.
3. The Respondent opposed the application, stating that the sentence was overly lenient.

Submissions

4. Parties submitted orally. The state maintained that time spent was considered, and the Applicant was of the opposite view. It is my duty to resolve the dispute without undue regard to procedural technicalities.



Analysis

5. The power to revise sentence arises from the court's powers under Article 165(6) of the Constitution of Kenya which states that the High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
6. The revisionary powers of this court are for purposes of satisfying itself as to the correctness, legality or propriety of any finding by the subordinate court as set out under Section 362 and 367 of the Criminal Procedure Code, that:
 362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
 367. When a case is revised by the High Court it shall certify its decision or order to the court by which the sentence or order so revised was recorded or passed, and the court to which the decision or order is so certified shall thereupon make such orders as are conformable to the decision so certified, and, if necessary, the record shall be amended in accordance therewith.
7. The Applicant was charged with robbery with violence contrary to Section 296(2) of the penal code. The sentence given in law is the death sentence. I had not warned the Applicant of the risk of such sentence being meted out. Nevertheless, the sentence of 10 years was overly lenient. It appears the court substituted the death sentence for 10 years. We may never know. However, the court cannot invoke Section 333(2), as going into this will mean that the court also looks at the legality or otherwise of the 10-year sentence. Let the Applicant rest assured that we conspired to give him 10 years. He should serve the same. The proper cause would have been to substitute with the death penalty, which I cannot do in this instant. It does not mean that in the future, a court considering this matter, when otherwise moved, will not warn the applicant and mete out the sentence.
8. In this particular matter, the issue of taking into consideration the time spent in custody under Section 333(2) of the Criminal Procedure Code is not discretionary. The court should indicate when a sentence is to begin. The said section provides 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 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.
9. However, the section does not apply to indefinite sentences like life and death sentences. The decision cannot, as such, be revised. The application is dismissed.

Determination

10. I therefore make the following orders: -
 - a. The undated application filed on September 21, 2024 is dismissed.
 - b. The file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 30TH DAY OF APRIL, 2025.



RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Kimani for the State

Pro se Applicant – present

Court Assistant – Michael

M. D. KIZITO, J.

