



**Ingosi v Republic (Criminal Miscellaneous Application E059 of 2024) [2025] KEHC 5136 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5136 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL MISCELLANEOUS APPLICATION E059 OF 2024**

**S MBUNGI, J  
APRIL 29, 2025**

**BETWEEN**

**EUGENE INGOSI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an application affidavit for sentence review from the decision, orders and finding at Kakamega CRC NO. 589 of 2020 in a judgment delivered on 22/01/2024, robbery with violence contrary to section 296 (2) of the penal code)*

**RULING**

1. The Applicant herein had been charged with the offence of robbery with violence contrary to section 296 (2) of the *Penal Code*. The trial court convicted and sentenced him to serve 30 years' imprisonment in a judgment delivered on 22<sup>nd</sup> January 2024.
2. The Applicant has filed an application for review of his sentence dated 22<sup>nd</sup> March 2024 stating that he has no intention to appeal the conviction however he now prays for the reduction of his sentence to a less severe sentence.
3. He states that he a first time offender who has now reformed, rehabilitated and is remorseful.
4. He claims that his sentence was commuted from the day of the pronouncement of his sentence rather than from the date of his arrest
5. In his application, the Applicant equally prays that the court considers the time he spent in custody and reduce his time in prison to 30 years. He avers that he has rehabilitated and reformed and seeks for leniency.



6. The learned Counsel for the Respondent opposed the Application and prays that the court upholds the decision of the lower court. He claimed that the interfere with the decision of the court.
7. He further opines that the applicant did not provide evidence that he had been in custody when the case was being heard in the first instance.
8. He urged the Court to dismiss the Application.

### **Analysis and Determination**

9. The prayers of the applicant herein are that the time he spent in custody be taken into account under the provisions of Section 333(2) of the [Criminal Procedure Code](#). The said section 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.”

10. This duty is further buttressed under clauses 7.10 and 7.11 of the [Judiciary Sentencing Policy Guidelines](#) and in the cases of [Abamad Abolfatbi Mohammed & another v Republic](#) [2018] eKLR and [Bethwel Wilson Kibor v Republic](#) [2009] eKLR].

11. In [Bethwel Wilson Kibor v Republic](#) [2009] eKLR it was held: -

By proviso to section 333(2) of [Criminal Procedure Code](#) where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J., who sentenced the appellant, did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”

12. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced ought to be taken into account by the trial court in meting out sentence unless it is hindered by other provisions of the law.
13. The file before court does not indicate the date the accused was arrest, or if the trial court considered the time he was arrested before the conviction.
14. The offence of Robbery with Violence is provided for under the Section 296(2) of the [Penal Code](#) as follows:

“296. Punishment of robbery

1. ....
2. If the offender is armed with any dangerous or offensive weapon or instrument, or is in company with one or more other person or persons, or if, at or immediately before or immediately after the



time of the robbery, he wounds, beats, strikes or uses any other personal violence to any person, he shall be sentenced to death.”

15. The *Penal Code* prescribes a death sentence for the offence of robbery with violence. In this instance, the trial court imposed a sentence that is more defined and less than is prescribed in law, being 30 years.
16. The Applicant has served less than a year and has not provided any evidence to prove that he has reformed or rehabilitated from the incarceration. There is no probation report to support his claim of reformation.
17. In *James Kariuki Wagana v Republic* [2018] eKLR, Prof. Ngugi J observed that while the penalty of death is the maximum penalty for both murder and robbery with violence, the court has the discretion to impose any other penalty that it deems fit and just in the circumstances. He further observed that the death sentence should be reserved for the highest and most heinous levels of robbery with violence or murder. He noted that while force had been used in the case before him, it could not be said that the appellant used excessive force, nor did he “unnecessarily injure the Complainant during the robbery” and was not armed during the robbery.
18. I find that the sentence meted was not only correct, but was legal and proper as it factored in the period that the Applicant spent in remand custody while undergoing his trial as well as the severity of the offence save that the trial lasted failed to state the date the imprisonment term was to begin.
19. From the record the accused was arrested on 11.7.2020 he has spent 4 years in custody a fact acknowledged and considered by the trial court when it passed the imprisonment term for 30 years, therefore the term should start running from 11.7.2020 but not from the date of the pronouncement of the sentence.
20. It is hereby so ordered.
21. Right if Appeal 14 days.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29<sup>TH</sup> DAY OF APRIL, 2025**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Court Assistant – Albright Sunguti

