



REPUBLIC OF KENYA



KENYA LAW
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**Karimbo v Republic (Miscellaneous Criminal Application
E021 of 2025) [2025] KEHC 7697 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7697 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E021 OF 2025**

RL KORIR, J

MAY 30, 2025

BETWEEN

BONIFACE MURIUNGI KARIMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Boniface Muriungi Karimbo filed the present undated Application also titled Petition seeking orders that:-
 - i. A declaration that the period spent in lawful custody by the petitioner before he was convicted be taken into account and deducted from the sentence of 10 years
 - ii. A declaration that failure to comply with section 333(1) (2) of the Criminal Procedure Code offends article 27(1) (2) , 50(2) and 51(1) of the Constitution of Kenya 2010.
 - iii. A declaration that failure to comply with Section 333(1) (2) of the Criminal Procedure Code denied the petitioner rights under Article 50(2) of Constitution of Kenya 2010.
 - iv. An order directing the petitioner’s sentence of 10 years to commence from the date of arrest, and not from when he was convicted and sentenced.
2. In support of his petition, the Applicant cited several cases in which the Applicants therein had benefited from a reduction of sentence under Section 333(2) of the Criminal Procedure Code. At the hearing of the petition and on 26th March 2025 the Applicant made oral submissions while the Respondent relied on their written submissions dated 24th March, 2025.
3. The Applicant asked the court to relook his sentence with a view to reducing it. He submitted that he had small children who needed his care as his wife ran away when he was sentenced to prison. That



his children were now under the care of the aged mother. He submitted that he had acquired relevant skills in prison which would assist him if released.

4. The Respondents' submitted that the Petition lacked merit as the Petitioner had benefited from a lenient sentence way below the statutory minimum of 20 years provided under Section 8(3) of the Sexual Offence. That the Petitioner had appealed to the High Court and his appeal was heard and dismissed.
5. The Respondents relied on Abamed Abolfathi Mohammed and Another vs. Republic (2018) eKLR and DS vs. Republic [2022] KEHC 2502 KLR on the application of Section 333 (2) of the Criminal Procedure Code.
6. The Respondent urged that the test to be applied was whether the failure of the trial specifically mention and deduct the pre-trial custody period resulted in excessive and unjust punishment.
7. With respect to jurisdiction, the Respondent urged the position that the Petitioner could not return to the High Court after the same court heard and upheld his conviction and sentence.

Analysis and determination

8. The main argument by the Petitioner/Applicant is that the trial court failed in determining his sentence take into consideration the period he had spent in pre-trial custody. That such failure occasioned a violation of his fir trial rights under Article 50(2) of Constitution.
9. I have considered the Petition and the rival submissions. The first issue which arises is whether this court has the jurisdiction to entertain the Petition. This issue arises because the Applicant was tried and sentenced by the Magistrate's court. He subsequently appealed to the High Court. Gitari J upheld his conviction and sentence. There is no evidence that he has exhausted the appellate process so as to benefit from Article 50(2) of Constitution. Strictly, therefore he ought to proceed to the Court of Appeal to challenge the decision of Gitari J which was a decision of a court of equal competent and concurrent jurisdiction.
10. By returning to this court, the Petitioner, was trying to have a second bite of the cherry, a practice that his application as a petition. It does not matter that he has baptized his review Application as a Petition. I am persuaded by Lesiit J (as she then was) in the case of Moses Dola vs. Republic [2021] KEHC 6180 (KLR) where she held:-

“The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat-Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.

He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be a ground of appeal which can only be considered on appeal before the Court of Appeal.”

11. I have however, and for the benefit of the Petitioner, looked at the trial record as well as the appeal record in the High Court. The record shows that the Petitioner took plea on 6th October 2017 and denied the charge. He was granted cash bail of Kshs.50,000/- or Surety bond of Ksh.100,000/-. The surety availed himself on 24th October, 2017 and was duly approved. This means that the trial took



place when the Petitioner was out on bond. He was convicted on 10th September, 2021 and sentenced on 16th September, 2021.

12. From the above, it is clear to this court that the Petitioner was not truthful when he stated that he was in pre-trial custody and if he was, then it was for two weeks prior to availing a surety.
13. I have also considered the sentence meted out to the Petitioner. He was sentenced to 10 years' imprisonment instead of the mandatory 20 years under Section 8(3) of the *Sexual Offences Act*. As observed by Gitari J in her Judgement dated 20th April, 2023, "the Appellant (now Petitioner) was lucky to have been given a very lenient sentence."
14. In the end, the Petition lacks merit and I have no hesitation to dismissing it which I hereby do. The Petitioner's recourse is to the Court of Appeal against the earlier Judgement of the High Court.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF MAY, 2025.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and present at Embu Prison Ms Rukunga for the Republic; Muriuki (Court Assistant).

