



REPUBLIC OF KENYA



**KENYA LAW**  
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**Khapele v Republic (Criminal Revision E755 of 2024)  
[2025] KEHC 12032 (KLR) (Crim) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 12032 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL**

**CRIMINAL REVISION E755 OF 2024**

**AM MUTETI, J**

**JULY 31, 2025**

**BETWEEN**

**DENNIS OKWARO KHAPELE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a sentence review application pursuant to Article 50 (2) (q) and 165 of the Constitution and section 333 (2) of the criminal procedure code among other enabling provisions of lawfront HC.CRC CASE NO 18 OF 2020 MILIMANI delivered on 9th May 2022 by Hon. GRACE NZIOKA (J))*

**RULING**

1. The accused in this matter was charged with the offence of Murder Contrary to Section 203 as read with 204 of the Penal Code.
2. The accused entered into a plea bargain with the state and the charge was reduced to that of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code.
3. The victim of the murder was the accused person's wife.
4. Although the probation department recommended him to be considered for a non -custodial sentence, the trial court was not persuaded that this was a fit case for a non-custodial sentence.
5. The court took into account the aggravating circumstances of the case and sentenced him to serve a prison term of 15 years.



6. The accused has moved this under Section 333 of the Criminal Procedure Code and Article 50 (2) (q) of *the Constitution* to review the sentence in order to take into account the period he spent in custody prior to conviction and sentencing.
7. The court called for the parent murder file in order to ascertain whether the Judge in sentencing the accused took into account the period spent by the accused in remand.
8. The accused was arrested on 6/4/2020 and remained in custody until the 9<sup>th</sup> May 2022 when he was sentenced to serve a 15 years imprisonment term.
9. The applicant argues that the period of over 2 years that he spent in custody was not factored in sentencing and his wish is that this court reviews the sentence to include the 2 years stint in remand.
10. The state through Mr. Omondi argued that this court has no jurisdiction to entertain the application.
11. However, Mr. Omondi prosecution counsel did not address this court as to what should happen where a court inadvertently omits to consider the period spent in custody before conviction and sentence.
12. It is the view of this court that such an omission by the court is a defect or error apparent on the face of the record that the court has the jurisdiction to correct as a matter of law.
13. It would be dangerous to suggest that the court should close its eyes to an obvious illegality simply to avoid the appearance that it is revisiting the decision of a judge of concurrent jurisdiction. The error in law once discovered cannot be let to remain uncorrected in the spirit of Article 159 of *the Constitution*. If the court was to agree with Mr. Omondi, it would follow that errors that are apparent on the face of the record must be left for correction by the higher court on appeal yet that discovery could be discovered too late in the day. The effect of taking such a position would be to render the slip rule otiose yet the same has been utilized by courts since time immemorial to correct such obvious mistakes and errors.
14. In determining this application, I am reminded of the following words of Madan JA; “It must be acknowledged that a blunder on a point of law can be a mistake. The door of justice is not to be closed because a mistake has been made by a person of experience who ought to have known better. The court must be ready to do whatever is necessary to rectify a mistake in the interests of justice. It is known the courts of justice themselves make mistakes which is politely referred to as erring in their interpretation of laws and adoption of a legal point of view which courts of Appeal sometimes overrule. It is also not unknown for a final court of Appeal to reverse itself when wisdom accumulated over the course of the years since the decision was delivered so requires. It is all done in the interests of justice. A static system of justice cannot be efficient ....” See *Belinda Murai & 9 Others Vs. Amos Wainaina* (1979) KECA 25.
15. The point here is that the court cannot shut its eyes to an omission that has been pointed out to it by a litigant.
16. The provisions of Section 333 of the Criminal Procedure Code provides :-  
Warrant in case of sentence of imprisonment
  - (1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.



- (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
17. The sentencing ruling by the learned Honorable Lady Justice Nzioka is silent on whether the court took into account the period of 2 years and a few days that he spent in custody before sentencing.
18. This court cannot therefore ignore the issue raised by the applicant and as such, this court under the provisions of Articles 50(2) and 159 of *the constitution* reviews the sentence of 15 years to the extent that the same does not include the period spent in custody before sentence.
19. Accordingly, the order that this court grants is that the period of 15 years imprisonment imposed by the learned Honorable Lady Justice Nzioka shall be computed from the day of arrest that being 6/4/2020.
20. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31<sup>ST</sup> DAY OF JULY 2025.**

**A. M. MUTETI**

**JUDGE**

In the presence of:

Court Assistant: Kiptoo

In person for the Applicant

Omondi for the Respondent

