



**Wanjau v ODPP (Criminal Miscellaneous Application E038 of 2023)  
[2024] KEHC 2184 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 2184 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
CRIMINAL MISCELLANEOUS APPLICATION E038 OF 2023  
AK NDUNG’U, J  
FEBRUARY 29, 2024**

**BETWEEN**

**JIMNAH KAGUCIA WANJAU ..... APPLICANT**

**AND**

**ODPP ..... RESPONDENT**

**RULING**

1. The Applicant, Jimnah Kagucia Wanjau vide Chamber Summons dated 22<sup>nd</sup> August, 2023, sought orders that the court does compute his sentence from the date of arrest which is 5<sup>th</sup> September 2015.
2. The background to the application is that the applicant was charged in Nyahururu CM’S CRC 2102 of 2016 with the offence of grievous harm contrary to section 234 of the penal code. He was tried, convicted and sentenced to a term of life imprisonment.
3. He appealed before this court against the conviction and sentence and in a judgement dated 6<sup>th</sup> July 2017, (Wendoh J) the conviction was upheld and the sentence reduced to 20 years imprisonment.
4. The application is based on the following grounds;
  - a. That this court has the jurisdiction to compute the 20 years sentence from the date of arrest as held in *Vincent Sila & 87 Others v Kenya Prisons Service & 2 Others* [2012] which relied on the case of *Protus Buliba Shikuku v Republic* [2012] which held;

“We are in agreement that Article 23 of the current 2010 *Constitution* as read with Article 165(1) 3(a) (b) (d) (i) (ii) have donated the same mandate without exception to this superior court and for this reason of donation of jurisdiction without exception we feel confident that we are properly seized of the Petitioner’s complains which arise from an alleged act of omission or commission by the courts of this jurisdiction as laid out in the petition.”



This court is seized with the jurisdiction to address a violation of a fundamental rights where Superior Court has occasioned such a violation. This is only the extent that the time spent in remand while undergoing trial was not taken into account.

- b. That *Vincent Sila & 87 Others v Kenya Prisons Service & 2 Others* [2021] the court proceeded to make the following orders; (b) A declaration that those 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. That the Applicant has been denied his right to equal benefit and equal protection of the law as guaranteed under Article 27 (1) (2) and (4) of the *Constitution* by the fact that the time spent in remand while undergoing trial was not taken into account as required under Section 333 (2) of the *CPC*.
  - d. That the Applicant stands to serve an excessive sentence which may be occasioned by the fact that the time in remand has not been taken into account as required under Section 333 (2) of the *CPC*. Which amounts to being detained without a just cause and a violation of Article 29(a) of the *Constitution*.
  - e. That the Applicant does not move this court to interfere with the 20 years sentence but seeks this court to implement and uphold the current position of the law and compute the Applicant's sentence from the date of arrest which is 5<sup>th</sup> September, 2015.
  - f. That this court to order for any such orders it deem appropriate in the instance case.
5. The same is supported by an affidavit by the Applicant dated 22<sup>nd</sup> August, 2015.
  6. I have considered the application herein and note that the Applicant appealed before this court and vide a judgment dated 6<sup>th</sup> July, 2017, his sentence was reduced to 20 years from life imprisonment. This judgement was by a court of concurrent jurisdiction.
  7. This court therefore has no further jurisdiction to entertain this matter and if aggrieved by this court's earlier orders on sentence, the available remedy can only be sought in the court of appeal.
  8. The application herein is dismissed.

**DATED SIGNED AND DELIVERED IN OPEN COURT THIS 29<sup>TH</sup> DAY OF FEBRUARY 2024**

.....

**A.K. NDUNG'U**

**JUDGE**

