



Gitonga alias John Mwenda Muthiora v Director of Public Prosecutions (Criminal Revision E297 of 2023) [2024] KEHC 1758 (KLR) (22 February 2024) (Ruling)

Neutral citation: [2024] KEHC 1758 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVISION E297 OF 2023
TW CHERERE, J
FEBRUARY 22, 2024**

BETWEEN

KEN GITONGA ALIAS JOHN MWENDA MUTHIORA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. Applicant was charged and convicted on four counts namely Obtaining money by false pretences contrary to section 313 of the *Penal Code* Cap 63 Laws of Kenya; Forgery contrary to section 349; Personation contrary to Section 382 and Conspiracy to defraud contrary to Section 317 of the same Act.
2. After a full ytrial, Applicant was found guilty and convicted and sentenced as follows:
 1. Counts 1 and 2 to serve 3 years imprisonment
 2. Counts 3 and 4 to serve 2 years imprisonment
 3. Sentences to run concurrently
3. Applicant seeks a review of the sentence on the ground that the one-year period he spent in custody was not considered when he was sentenced.
4. The Court of Appeal held in the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR that: -

“By proviso to section 333(2) of the *Criminal Procedure Code*, where a person sentenced has been held in custody prior to such sentence, the sentence shall take into 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 10 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.”

5. Applicant was arrested on 22nd August, 2022 and remained in custody throughout the trial.
6. It is therefore ordered that the term of 2 and 3 years imposed on the Applicant shall be computed from 22nd August, 2022 when he was arrested.

DELIVERED AT MERU THIS 22ND DAY OF FEBRUARY 2024

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistants - Kinoti/Munene

Applicant - Present in person

For DPP - Ms. Rita (PC-1)

