



**Kurash v Republic (Criminal Revision E111 of 2022)
[2024] KEHC 2809 (KLR) (Crim) (19 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2809 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E111 OF 2022
K KIMONDO, J
MARCH 19, 2024**

BETWEEN

NTEETU OLE KURASH APPLICANT

AND

REPUBLIC RESPONDENT

(Revision from the sentence in Milimani Criminal Case No. 1495 of 2017 by M. A. Nanzushi, Principal Magistrate on 17th November 2021)

RULING

1. The applicant was convicted by the lower court on three counts revolving around the offence of obtaining property by false pretences. He was fined a total of Kshs 300,000; in default to serve imprisonment for 2 years on each of the counts.
2. I should add that when his co-accused were sentenced on 27th August 2021, the applicant had jumped bail. He was presented to court on 17th November 2021 pursuant to a warrant of arrest and sentenced. He was to serve an additional 4 months for absconding court.
3. Being aggrieved, he lodged a revision dated 28th January 2022 praying, in the main, that the sentences run concurrently and that he be credited with the period spent in remand custody.
4. He avers that he is a father of eight school-going children who look up to him for support; and, that he has embraced Christianity and reformed in prison.
5. The High Court called for the original records of the lower court. On 5th March 2024, I heard brief arguments from the applicant and the Republic.



6. I take the following view of the matter. Under Article 165 (6) of the *Constitution* as read together with sections 362 to 364 of the *Criminal Procedure Code*, the High Court is imbued with wide powers to revise the sentence passed by the subordinate court.
7. From the judgment of the lower court, the applicant was a central cog upon which the fraud turned. Section 313 of the *Penal Code*, for instance, provides for a sentence of up to three years. The sentence of 2 years was thus well within the discretion of the learned trial magistrate. It was equally lawful to order that the sentences, which were for distinct offences, to run consecutively. I thus decline to review the sentences.
8. However, the trial court did not grant the applicant credit for the period spent in remand custody. Section 333 (2) of the *Criminal Procedure Code*, obligates the sentencing court to take into account the period spent in remand custody. See generally, Ahamad Abolfathi Mohammed & Another v Republic, Court of Appeal at Nairobi, Criminal Appeal 135 of 2016 [2018] eKLR.
9. I thus order that the period spent in remand custody from the date of his arrest on 23rd August 2017 to sentencing on 17th November 2021 (but excluding the days when he was out on bond or had jumped bail) shall be deducted from each of the sentences. This revision partially succeeds to that limited extent.

It is so ordered.

DATED, SIGNED and DELIVERED at NAIROBI this 19th day of March 2024.

KANYI KIMONDO

JUDGE

Ruling read virtually on Microsoft Teams in the presence of-

Applicant.

Ms. Ntabo for the Republic instructed by the Office of the Director of Public Prosecutions.

Mr. E. Ombuna, Court Assistant.

