



REPUBLIC OF KENYA



**Zablon alias Orangi v Republic (Criminal Revision E115 of 2023)  
[2024] KEHC 5805 (KLR) (25 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 5805 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAMIRA  
CRIMINAL REVISION E115 OF 2023  
WA OKWANY, J  
APRIL 25, 2024**

**BETWEEN**

**CHARLES KENYORI ZABLON ALIAS ORANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being a Revision against the Sentence of Hon. M. C. Nyigei – Principal Magistrate  
at the Chief Magistrate’s Court in Nyamira dated and delivered on the 30th  
day of July, 2021 in the original Nyamira CM’s Criminal Case No. 718 of 2020)*

**RULING**

1. The Applicant herein, Charles Kenyori Zablon alias Orangi, was charged and convicted for the offence of manslaughter contrary to Section 202 as read with Section 205 of the Penal Code. He was thereafter sentenced to serve 5 years’ imprisonment. He filed the Application that is the subject of this ruling seeking a Revision of sentence in accordance with Section 333 (2) of the Criminal Procedure Code.
2. The Respondent did not oppose the Application and urged the court to consider the circumstances of the case and render its verdict in accordance with the law.
3. I have perused the trial court’s record which reveals that the Applicant first appeared in court on 3<sup>rd</sup> July 2020 and that the trial ended one year later on 30<sup>th</sup> July 2021.
4. Article 165 of the Constitution stipulates as follows: -
  - (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.



- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
5. Sections 362 and 364 of the [Criminal Procedure Code](#), also provide as follows: -
362. Power of High Court to call for records
- The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.
364. Powers of High Court on revision
- (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—
- (a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;
- (b) in the case of any other order other than an order of acquittal, alter or reverse the order.
- (2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:
- Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.
6. The above provisions grant this court the jurisdiction to call for records from the subordinate courts in order to satisfy itself on the legality, propriety and correctness of their decisions.
7. The circumstances under which a court may interfere with the sentence of a subordinate court were outlined in *R v Mohamedali Jamal* (1948) 15 E A C A 126 thus: -
- “It is well established that an appellate Court should not interfere with the discretion exercised by a trial Judge or Magistrate except in such cases where it appears that in assessing sentence the Judge has acted upon some wrong principle or has imposed a sentence which is either patently inadequate or manifestly excessive.”
8. Section 333 (2) of the [Criminal Procedure Code](#) states as follows: -
333. Warrant in case of sentence of imprisonment
- (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.



9. The *Judiciary Sentencing Policy Guidelines* provide as follows: -
10. The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed.
11. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.
10. In *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR, it was held: -
- “The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the *Criminal Procedure Code*. By dint of section 333(2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the *Criminal Procedure Code* was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19<sup>th</sup> June 2012.”
11. As I have already stated in this ruling, the Applicant was first presented in court on 18<sup>th</sup> July 2020. The offence in question occurred on the night of 15<sup>th</sup> and 16<sup>th</sup> July 2020. I note that even though the Applicant was granted bond of Kshs. 300,000/=, he was not able to raise the surety and remained in custody for the entire one (1) year period of the trial.
12. A perusal of the proceedings relating to the sentence shows that trial court only considered the Applicant’s mitigation and not the period spent in custody. I find that the provisions of Section 333 (2) was not complied with, rendering the sentence improper.
13. It is my finding that the trial court should have considered the period that the Applicant spent in remand custody while awaiting his trial. I therefore find that the Application is merited and I hereby allow it. I direct that the period of 1 year that the Applicant spent in remand custody be computed and deducted from his sentence period. in accordance with the dictates of Section 333 (2) of the *Criminal Procedure Code*.
14. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA VIA MICROSOFT TEAMS THIS 25<sup>TH</sup> DAY OF APRIL 2024.**

**W. A. OKWANY**



**JUDGE**

