



REPUBLIC OF KENYA



**Esekon v Republic (Criminal Revision E001 of 2024)
[2024] KEHC 6025 (KLR) (28 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6025 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT LODWAR
CRIMINAL REVISION E001 OF 2024**

RN NYAKUNDI, J

MAY 28, 2024

BETWEEN

LOCHERIA ESEKON APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Representation:

Mr. Edward Kakoi for the state

1. The applicant was charged with the offence of murder to section 203 as read with section 204 of the *Penal Code* in Lodwar High Court Criminal Case No. 6 of 2016. The court heard his case and reduced his charge to manslaughter and sentenced him to 15 years' imprisonment on 17th November, 2017 by Hon. S. Riechi.
2. The applicant subsequently filed an application dated 28th February, 2022 in Misc Criminal Appeal No. E007 of 2022 before this court seeking review of his sentence, which application was found without merit. The Applicant has come back again now invoking the provisions of Section 333(2) seeking to have credit on the time spent in custody prior to his conviction and sentencing. In the said application, he states that the time he spent in pre-trial custody should be considered. ANalysis And Determination
3. The provisions of section 333(2) provide as follows:

(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.

4. Without a doubt a court should take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so would impact on the overall period of detention which would result in excessive punishment that in turn would be disproportionate to the offence committed.
5. In *Bethwel Wilson Kibor vs Republic* [2009] eKLR the Court of Appeal expressed itself as follows: -

“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.”
6. It follows then that the court should state in its decision that it indeed the time spent by the accused in custody has been considered and that it has factored it in the final sentence. Failure to do so means that the period was not taken into consideration.
7. The punishment prescribed by the law for the offence in question is life imprisonment. I take note that the applicant was found guilty of the offence. The trial court in its sentencing decision stated that the mitigating factors were considered. Part of the mitigation advanced by the applicant was that the applicant has been in remand from August, 2016. I form the opinion that the court in its wisdom considered all the mitigating factors and imposed an appropriate sentence given that the offence of manslaughter attracts a life imprisonment. The applicant should acknowledge the fact that the offence of manslaughter is a serious one and the sentence imposed is appropriate. He should therefore desist from making applications to this court with the hope that the same will be reviewed. Let him serve the sentenced imposed to completion.
8. It is so ordered.

DATED AND SIGNED AT ELDORET THIS 28TH DAY OF MAY, 2024

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R. NYAKUNDI

JUDGE

