



REPUBLIC OF KENYA



KENYA LAW
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**Nyamu v Republic (Criminal Revision E015 of 2023)
[2024] KEHC 6032 (KLR) (27 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E015 OF 2023
MA ODERO, J
MAY 27, 2024**

BETWEEN

BRIAN NDEGWA NYAMU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein has filed an application seeking review of the sentences imposed upon him by the trial court.
 - (i) The applicant was charged with a count of Threatening to Kill contrary to Section 223 of the *Penal Code*. The particulars were that on 26th October, 2022 at around 2000 Hrs at Rafina Dred Karatina township, Mathira East Sub-county within Nyeri County threatened to Kill Rhoda Wambui Wangeci while holding a knife.
 - (ii) In the second count he was charged with Assault causing bodily harm contrary to Section 251 of the *Penal Code* with the particulars being that on 26th October, 2022 at around 2000 Hrs in Rafina Dred Karatina township, Mathira East sub-county within Nyeri County he unlawfully assaulted Rhoda Wambui Wangeci thereby occasioning her actual bodily harm.
 - (iii) In the third count the Applicant was charged with malicious damage to property contrary to Section 339 (1) of the *Penal Code* with the particulars being that on the 26th day of October 2022 at around 2022 Hrs in Rafina Dred Karatina township, Mathira East Sub-county within Nyeri County willingly and unlawfully destroyed the television make Samsung valued at Kshs. 40,000/- the property of Rhoda Wambui Wangeci.
2. The Applicant entered a plea of Guilty to all the three charges. Upon the facts being read out to him the Applicant maintained his Guilty plea.



3. On 1st March, 2023, the Applicant was sentenced to serve three (3) years imprisonment on count Number 1. For the second count he was sentenced to serve two (2) years imprisonment whilst on the third count the Applicant was sentenced to serve five (5) months imprisonment.
4. The Applicant now seeks to have the above sentences reviewed.
5. The Hon. Deputy Public Prosecutor (DPP) opposes this application for review of sentences stating that the offences were serious and warranted the sentences which had been meted out.
6. The DPP only concedes towards the Applicants plea that the period which he spent in remand be considered.
7. The power of the High Court to review sentences is provided by Section 362 of the [Criminal Procedure Code](#) which provides as follows

“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.

8. The court therefore is obliged to examine the correctness, legality and/or propriety of any finding sentence or order.
9. Having perused the record in this matter I am satisfied that the trial of the Applicant was properly conducted. I find no impropriety in the manner in which the plea was taken and the sentences imposed were all legal. I therefore find no grounds to warrant a review of the sentence. If the Applicant is aggrieved by the sentences which were imposed then he is at liberty to file an appeal against said sentences.
10. This is not in my view a matter for review.
11. Having said that I note that the Applicant was arrested on 26th October, 2022 and was sentenced on 1st March, 2023. He was therefore held in custody for a period of four (4) months and four (4) days.
12. Section 333 (2) of the [Criminal Procedure Code](#) mandates a court to take into account the period of time spent by a suspect in custody prior to sentencing. Section 333 (2) provides as follows:-

“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” (Own emphasis)

13. The provisions of Section 333(2) were elucidated in the case of [Abamad Abolfathi Mohammed & Another -vs- Republic](#) [2018] eKLR where the court of Appeal stated as follows:-

“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

I have 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.” [Own emphasis]

14. Therefore I allow the Applicant’s plea to have the period of time spent in custody considered and taken into account in computing his sentence. Accordingly I direct that the period of Four (4) months and four (4) days be deducted from the Applicants sentence. It is so ordered.

DATED IN NYERI THIS 27TH DAY OF MAY, 2024.

MAUREEN A. ODERO

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

