

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ELDORET
MISC CRIMINAL APPLICATION E151 OF 2024

ABRAHAM WAFULA WEKESA.....

.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

Coram: Justice R. Nyakundi

M/s Sidi for the State

RULING

- 1.** What is pending before this Court for determination is an undated Notice of Motion Application in which the Applicant is seeking the following orders;
 - a. That the petitioner is seeking for sentence review.
 - b. Spent.
 - c. That may this hon. Court be pleased to invoke provisions of section 333(2) of the CPC and allow his sentence to commence from the date of his arrest being 16/07/2011.
 - d. That the applicant will be seeking a declaration by the court that his application has merits and qualifies to be heard.
 - e. That this honorable court is properly seized and clothed with the powers donated by the constitution under Article 165 (3) to hear and determine applications of this nature and award remedies as it was held in the case of Protus Buliba Shikulu Vs Attorney General (2012) eKLR.
- 2.** The application is made on the following mitigating grounds of petition in the face of it among others;
 - a) That the applicant is a first offender and thus beg for leniency.

- b) That the applicant is remorseful, repentant and reformed since he has have learnt incarceration in prison to take responsibility of his own actions.
 - c) That the sentence 40 years meted against him was manifestly harsh and excessive as it was held in the case of Abdalla Mwanza Cr. App No.259/12 C.O.A Mombasa.
- 3.** The Application is supported by the annexed affidavit sworn by the Applicant who deponed as follows;
- a) *That, I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit.*
 - b) *That, I was charged with offence of murder c/sec 203 as read to 204 of penal code and sentence to serve 40 years' imprisonment.*
 - c) *That, I do not have any application in the court of appeal*
 - d) *That, I am requesting or a more lenient sentence*
 - e) *That, the sentence of 40 years meted upon me is harsh and excessive as held in the case of Ali Abdalla Mwanza C.O.A CR. APP.NO.259/12*
 - f) *That, this Hon. court has competent, unlimited jurisdiction to hear and determine this application under the provisions of article 165(3) (b) of the constitution of Kenya 2010 as it was held in the case of Protus Buliba Shikulu Vs Attorney General (2012) eKLR*
 - g) *That, may this honorable court be pleased to invoke the provisions of section 333(2) of the CPC and order my sentence to commence from the date of my arrest being 16/7/2011*
 - h) *That, I have young family with school going children who sorely depend on me for their basics needs and education*
 - i) *That, I am well reformed rehabilitated and transformed person*
 - j) *That more grounds to be adduced and canvassed through written submissions*
 - k) *That I beg to be present at the hearing of this petition*

Decision

4. The principles under section 333(2) of the Criminal Procedure Code are now well settled as demonstrated in the following case law:

"A declaration that trial courts are enjoined by section 333(2) of the Criminal Procedure Code, in imposing sentences, other than sentence of death to take into account of the period spent in custody. A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by the high court in order to determine their appropriate sentences. A declaration that section 333(2) CPC applies to the original sentence as well as sentence imposed during sentencing..."

5. Additionally, in **Ahamad Ablofathi Mohammed & another v Republic [2018] eKLR** where the court of Appeal held that:

"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, the court was obliged to take into account the period that they 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 proportionality by the period spent in custody. It is not enough for the court to merely state that it is 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 June 19, 2012."

6. The necessary information relating to these factors must be placed before the sentencing court to enable it to exercise its sentencing discretion properly. This will give meaning to the sentencing principles that lead to the imposition of a just sentence. This court invoking the principles elucidated in Section 333(2) of the Criminal Procedure Code and considering that the nature of the sentence is custodial, this calls upon itself to give the provisions a purposive interpretation so as to give effect to the pre-detention credit. Consequently, the committal warrant shall be amended for the sentence to take effect from 16th July 2011. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 13TH
AUGUST 2025**

.....
**R. NYAKUNDI
JUDGE**