



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL CASE NO E0383 OF 2021**

**THOMAS MUTUNE.....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

**The case for the applicant**

The applicant under certificate of urgency applied for the following orders.

1. Spent
2. The court should invoke its powers of revision as donated by the Constitution by article 165 (3) (7) and re-open its earlier decision in Misc Criminal Application No. 242 of 2019 that was rendered on 20<sup>th</sup> September 2021.
3. The court should take into account the 2 years 5 months and 29 days when the applicant was in pre-trial custody in accordance with section 333 (2) of the Criminal Procedure Code (Cap 75) Laws of Kenya.

The application is supported by a 15 paragraphs supporting affidavit of the applicant; whose major averments are as follows. He has deposed that he was in pre-trial custody for 2 years 5months and 5 days which should be deducted from the current sentence.

The applicant's appeal to the High court in Nairobi reduced the sentence to 15 years from 30 years on 13<sup>th</sup> March 2019. The applicant appealed to the Court of Appeal which dismissed his appeal on 6<sup>th</sup> November 2021.

That on 20<sup>th</sup> September 2021 the High Court dismissed the applicant's application namely Nairobi High Court Misc. Criminal Application No. 242 of 2019 in which the applicant had sought to have the pre-trial custody period of 2 years 5 months and 29 days to be taken into account in accordance with section 333 (2) of the Criminal Procedure Code.

**The case for the Republic/respondent**

Counsel for the respondent opposed the application by filing three grounds of opposition. First, counsel has submitted that this court lacks jurisdiction to entertain and determine the matter; since the appeal of the appellant was heard and determined by the Court of Appeal in Criminal Appeal No. 126 OF 2019, which dismissed the appeal on 6<sup>th</sup> November 2020. The applicant has exhausted his remedies through the appellate processes.

Second, the time he had spent in custody was taken into account when Mr. Justice Kimaru in his judgement in Criminal Appeal No. 168 of 2016 which was delivered on 13<sup>th</sup> March 2019.

The respondent also filed a skeleton argument which I find unnecessary to consider and I hereby decline to do so.

The respondent has urged the court to dismiss the application.

### **Issues for determination**

I have considered the deposition of the applicant and the grounds of opposition of the respondent.

As a result, I find that the following are the issues for determination. 1 Whether this court has jurisdiction to entertain and determine the application.

The Court of Appeal in Criminal Appeal No. 126 of 2019, dismissed the appeal of the applicant on 6<sup>th</sup> November 2020.

I find that the applicant has exhausted his appellate remedies.

I therefore find that I have no jurisdiction to entertain and determine this application.

In the premises, the application fails and is hereby dismissed in its entirety.

**Ruling signed, dated and delivered in open court at Nairobi through video conference on this 30<sup>th</sup> day of March 2022.**

**J M BWONWONG'A**

**JUDGE**

In the presence of-

Mr. Kinyua: Court Assistant

The applicant – present in person

Ms Oduor for the Republic/Respondent



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