



**Akanyanya v Republic (Miscellaneous Criminal Application  
E018 of 2024) [2024] KEHC 9262 (KLR) (31 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9262 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
MISCELLANEOUS CRIMINAL APPLICATION E018 OF 2024**

**JN KAMAU, J**

**JULY 31, 2024**

**BETWEEN**

**NICKSON AKANYANYA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was jointly charged with another not before this court with the offence of grievous harm contrary to Section 234 of the *Penal Code*. He was convicted and ordered to pay a fine of Kshs 80,000/= in default to serve a sentence of three (3) years imprisonment.
2. On 25<sup>th</sup> January 2024, he filed an undated Notice of Motion application seeking to have the period that he stayed in custody from 24<sup>th</sup> September 2021 to 9<sup>th</sup> September 2023 while the trial was ongoing be taken into account as part of the sentence that he had already served pursuant to Section 333(2) of the *Criminal Procedure Code*.
3. It was his assertion that all his fundamental rights had to be accorded while sentencing him. He cited Articles 19(2), (3)(a), (b), 20(1), 2(1), 25(c) and 50(2)(p) of the *Constitution* of Kenya and placed reliance on the case of *Bethwel Wilson Kibor vs Republic* Criminal Appeal No 78 of 2009 (eKLR citation not given). However, he did not highlight the holding that he was relying upon. He thus urged this court to grant him the orders he had sought.
4. He did not file Written Submissions to support his prayer. The Respondent was not opposed to the said application and did not therefore file any Written Submissions.



## Legal Analysis

5. As could be seen hereinabove, the Applicant's application was based on Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya). The said Section provides that:

“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” (Emphasis Court).
6. This duty was also contained in the [Judiciary Sentencing Policy Guidelines](#) where it is provided that: -

“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. 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.”
7. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in the case of [Abamad Abolfathi Mohammed and Another vs Republic](#) [2018] eKLR.
8. Although the Applicant indicated that he was arrested on 24<sup>th</sup> September 2021, the Charge Sheet herein showed that he was arrested on 25<sup>th</sup> September 2021. He was sentenced on 9<sup>th</sup> September 2022. Although he was granted bond/bail, he did not appear to have come out on bond/bail while his trial was going on. He thus spent eleven (11) months and fourteen (14) days in custody before he was sentenced.
9. A reading of the Trial Court's Sentence showed that it did not take into consideration the time he spent in remand before sentencing. This court was therefore convinced that this was a suitable case for it to exercise its discretion and grant the orders sought.

## Disposition

10. For the foregoing reasons, the upshot of this court's decision was that the Applicant's undated Notice of Motion application that was filed on 25<sup>th</sup> January 2024 was merited and the same be and is hereby allowed.
11. It is hereby directed that the time the Applicant spent in custody between 25<sup>th</sup> September 2021 and 8<sup>th</sup> September 2022 be taken into account while computing his sentence as provided in Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).
12. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 31<sup>ST</sup> DAY OF JULY 2024**

**J. KAMAU**



**JUDGE**

