



**Ntugu v Republic (Miscellaneous Criminal Application E026 of 2024)
[2024] KEHC 13695 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13695 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E026 OF 2024
LW GITARI, J
OCTOBER 29, 2024
(IN THE MATTER OF AN INTENDED APPEAL)**

BETWEEN

JEREMIAH NTUGU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks an order that the time spent in remand be considered as provided under Section 333(2) of the *Criminal Procedure Code* be considered.
2. I have considered the application. The applicant was charged in Marimanti Principal Magistrate’s Court Criminal Case No.1207/2019 with the offence of attempted murder contrary to Section 220 of the *Penal Code*. He was convicted and sentenced to serve nineteen years imprisonment. He filed Criminal Appeal No.E018/2021 in this court which was dismissed for want of merit. He has moved to this court to urge the court to consider the pretrial detention which he submits was not taken into account by the learned magistrate.
3. I have considered the record of the learned magistrate and in particular at page 49 where the learned trial magistrate stated:-

“Under the circumstances and taking into account the period already spent in remand, the accused is hereby sentenced to nineteen (19) years imprisonment for the offence of attempted murder.”
4. As stated in the case of *Abamad Abolfathi Mohamed & Another -v- Republic* (2018) eKLR, Court of Appeal, the court stated that it is not enough to state that the court has taken into account the time spent in prison and order the sentence to start from the date of sentence, taking into account must



mean taking into account the period spent in custody awaiting trial to reduce the sentence. The court held 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.....“Taking into account “ the period spent in custody must mean considering that period so that the sentence imposed is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of conviction because that amount to ignoring altogether the period already spent in custody.”

5. The learned magistrate fell into error by failing to show that the sentence imposed was reduced proportionally with the period spent in pre-trial detention.
6. I find that the application has merits. I allow the application and order that the sentence imposed on the applicant shall run from 5/11/2019 to take into account the time spent in custody awaiting trial.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH OCTOBER 2024.

L.W. GITARI

JDUGE

