



**Samaki v Republic (Miscellaneous Criminal Application E027 of 2024)
[2024] KEHC 13870 (KLR) (29 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13870 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E027 OF 2024**

LW GITARI, J

OCTOBER 29, 2024

BETWEEN

SIMON SAMAKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant seeks an order that time spent in remand awaiting trial be considered as provided under Section 333(2) of the Criminal Procedure Code (Cap 75 Laws of Kenya).
2. The State did not oppose the application. Section 333(2) *supra* provides that:

“(2) Subject to the provisions of section 38 of the Penal Code 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.”

The Section is couched in mandatory terms and requires the trial court to take into account the period spent in custody awaiting trial to reduce the sentence which the court ultimately imposes on the accused person. This was so stated in the case of Ahamed Abolfathi & Another v Republic (2018) eKLR where the court of Appeal held that;

“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 amounts to ignoring altogether the period already spent in custody.”

3. In this case the learned magistrate did not consider the pretrial detention by the applicant when passing sentence. The applicant was in custody from 7/1/2020. Although the applicant was granted bail, he did not comply with the terms and remained in custody upto 9/8/2021. The period spent in custody was not considered.
4. In the end I find that the application has merits. I order that the sentence imposed on the applicant should run from 7/1/2020 to take into account the time spent in custody. I do order.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 29TH DAY OF OCTOBER 2023.

L.W. GITARI

JUDGE

