



**Shavasinya v Republic (Miscellaneous Criminal Application
E029 of 2024) [2024] KEHC 14854 (KLR) (27 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14854 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2024**

JN KAMAU, J

NOVEMBER 27, 2024

**IT IS HEREBY ORDERED AND DIRECTED THAT THE PERIOD THE APPLICANT
SPENT IN CUSTODY BETWEEN 17TH AUGUST 2022 AND 14TH JUNE 2023 BE TAKEN
INTO ACCOUNT WHEN COMPUTING HIS SENTENCE IN ACCORDANCE WITH
SECTION 333(2) OF THE CRIMINAL PROCEDURE CODE CAP 75 (LAWS OF KENYA).**

BETWEEN

ERICK SHAVASINYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of grievous harm contrary to Section 234 of the Penal Code. He was convicted and sentenced to three (3) years imprisonment.
2. On 5th February 2024, he filed Notice of Motion application dated 31st January 2024 seeking a review of his sentence. He urged the court to consider the period of eleven (11) months that he spent in remand during trial from 17th August 2022 to 12th June 2023 when he was arrested and sentenced respectively as part of his sentence.
3. In that regard, he placed reliance on the case of Ahammed Abolfathi Mohammed & Another vs Republic [2018] eKLR and Bethwel Wilson Kibor vs Republic Criminal Appeal No 78 of 2009 (eKLR citation not given) where the courts while applying Section 333(2) of the Criminal Procedure Code held that the sentence of imprisonment ought to run from the date of arrest.
4. He did not file any Written Submissions. The Respondent was not opposed to the said application and did not therefore file any written submissions. The Ruling herein is therefore based on his affidavit evidence.



Legal Analysis

5. Section 333(2) of the Criminal Procedure Code 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 is 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 *Ahamad Abolfathi Mohammed & Another vs Republic* (Supra).

8. The Charge Sheet herein showed that the Applicant herein was arrested on 17th August 2022. He was sentenced on 15th June 2023. He thus spent nine (9) months and twenty eight (28) days in custody before he was sentenced.

9. A reading of the Trial Court’s Sentence showed that it did not take into account the time that he spent in remand before sentencing him. This court was therefore persuaded 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 Notice of Motion application dated 31st January 2024 and filed on 5th February 2024 was merited with regard to his prayer pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) only.

11. For the avoidance of doubt, it is hereby ordered and directed that the period the Applicant spent in custody between 17th August 2022 and 14th June 2023 be taken into account when computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

12. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 27TH DAY OF NOVEMBER 2024

J. KAMAU

JUDGE

