



**Abonyo v Republic (Miscellaneous Criminal Application  
E053 of 2022) [2023] KEHC 2898 (KLR) (31 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2898 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CRIMINAL APPLICATION E053 OF 2022**

**PJO OTIENO, J**

**MARCH 31, 2023**

**BETWEEN**

**CHARLES ODHIAMBO ABONYO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By an application dated August 15, 2022 the Applicant pleads with the Court for an order that the sentence imposed upon him by the trial court starts to run from the date he was arrested and arraigned in Court. Essentially the application invokes the power of the Court to supervise the lower courts pursuant to article 165 (7) and the compulsive application of section 333 (2) of the [Criminal Procedure Code](#).
2. Pursuant to that mandate the Court has perused the record at the trial Court and noted that having been convicted, the Applicant was sentenced to serve jail terms of 5, 1, 1 & 2 years for various counts of the charge sheet and the sentence was made to run concurrently.
3. When sentences run concurrently, the shorter terms are subsumed into the longest. It is therefore not necessary for the Applicant to seek that the sentences run concurrently when the trial court did direct so.
4. However, the commencement date of computation of the term of imprisonment was not isolated and identified by the Court and in that event it is taken to run from the date of sentence.
5. The law under Section 333 (2) [Criminal Procedure Code](#) make it mandatory that where the accused remains in custody during trial, the period of such incarceration be taken into account. In this matter the trial Court never alluded to that period at all. The Court has perused the court file and there is no evidence that the Applicant was ever admitted or released on bail/bond during the trial. The prosecution has not availed anything to suggest that the Applicant was not in incarceration.



6. It is therefore the finding of the Court that having been in custody throughout the trial, he was entitled to get the benefit of that period reduced from his imprisonment term by having the term be computed from the date of arrest.
7. For reasons that the trial Court failed to apply the provisions of Section 333(2) *Criminal Procedure Code*, the Notice of Motion dated August 15, 2022 is allowed to the extent that the concurrent sentences by the trial Court shall be computed from the April 4, 2019.

**DATED, DELIVERED AND SIGNED AT KAKAMEGA THIS 31<sup>ST</sup> DAY OF MARCH 2023.**

**PATRICK J O OTIENO**

**JUDGE**

**In the presence of:**

The Applicant in person

Ms Chala for the Respondent

Court Assistant: Polycap

