



**Abdirahman v Republic (Miscellaneous Criminal Application
E010 of 2022) [2023] KEHC 21713 (KLR) (28 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21713 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E010 OF 2022**

JN ONYIEGO, J

JULY 28, 2023

BETWEEN

MOHAMED ABDIRAHMAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant was charged before Garissa cm's court with the offence of Robbery with violence contrary to section 296 (2) of the Penal code. Particulars were that on the 13th day of February, 2021 at 0630 hours along Kismayu road near Garissa High School in Garissa Sub-county within Garissa County, jointly with another not before court, while armed with a dangerous weapon namely knife robbed one Hamed Hassan Yussuf one mobile phone make Samsung J1 worth Kshs; 12,500/= and immediately after the said robbery threatened to stab the said Hamed Hassan Yussuf.
2. Having returned a plea of not guilty, the matter proceeded to full trial. Upon conclusion of the trial, the appellant was convicted and sentenced to 10 years' imprisonment.
3. Subsequently, he moved to this court vide an undated application dated 6-6-2023 seeking review of the sentence on grounds that the trial court did not take into consideration the period spent in remand custody.
4. In response, the respondent filed submissions on 25-5-2023 opposing the application on grounds that the sentence meted out was legal and appropriate.



5. I have considered the application herein and the response thereof. Under section 362 and 364 of the [Criminal Procedure Code](#) this court has supervisory jurisdiction over subordinate courts; section 362 provides;

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

6. Further, section 364 of the [Criminal Procedure Code](#) provides.

(1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed

7. It is trite that sentencing is a discretionary power of the trial court, and that an appellate court will only intervene if the sentence is excessive, the trial court applied wrong principles or considered irrelevant factors. See [Robert Mutungi Muumbi v Republic](#) (2015) eKLR.

8. In this case, the applicant is asking the court to consider the period spent in the remand custody; the proviso under section 333 (2) of the [Criminal Procedure Code](#) does provide that a sentencing court ought to consider the period spent in remand custody when pronouncing sentence. See [Abamad Abol fathi Mohamed v Republic](#) (2018) e KLR where the court held that when passing sentence, the trial court is obligated to take into account the period spent in remand custody.

9. In this case, the trial court did not mention anything about the period spent in remand custody. The applicant was arraigned in court on 01-03-2021. He remained in custody until he was sentenced on 17-3-2022 translating to one year and 16 days.

10. Accordingly, the application for review of sentence is allowed and the period spent in remand custody be taken into consideration when computing sentence.



Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 28TH DAY OF JULY, 2023.

J. N. ONYIEGO

JUDGE

