



REPUBLIC OF KENYA



KENYA LAW
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**Shaady v Republic (Criminal Petition E018 of 2022)
[2023] KEHC 21689 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21689 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E018 OF 2022
RN NYAKUNDI, J
AUGUST 10, 2023**

BETWEEN

SHADRACK ISAIAH SAWALA SHAADY PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The applicant approached this court vide an application filed on September 19, 2022 seeking orders for resentencing in consideration of time spent as per the provisions of section 333(2) of the *Criminal Procedure Code*.
2. The petitioner was charged and convicted of the offence of robbery with violence in Eldoret Chief Magistrates' Criminal Case No 1250 of 2015 delivered on October 8, 2019. He was sentenced to life imprisonment and appealed against his conviction and sentence vide High Court Criminal Appeal No 158 of 2019 wherein his sentence was reduced to 20 years' imprisonment to run from the date of conviction.
3. The petitioner contends that he was in remand for 4 years and 5 months and the same was not computed in his sentence.

Analysis & Determination

4. Section 333(2) of the Criminal Procedure code provides as follows;

“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 into account of the period spent in custody.”

5. When the matter came up for appeal before this court, his sentence was to run from the date of conviction. From the record of the court, the accused was granted a surety and was not in custody during the pendency of part of the hearing. He was then apprehended for another offence and placed in remand which was brought to the attention of the court on January 11, 2019. He intimated to the court that he had been arrested on August 24, 2018 and was in custody from that date.
6. In the premises, I hereby allow the petition to the extent that the sentence of the petitioner of 20 years’ imprisonment shall be calculated to run from August 24, 2018.

It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 10TH DAY OF AUGUST 2023

R. NYAKUNDI

JUDGE

