



**Barrow v Republic (Miscellaneous Criminal Application
E014 of 2023) [2023] KEHC 24845 (KLR) (31 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 24845 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2023**

**JN ONYIEGO, J
OCTOBER 31, 2023**

BETWEEN

ADANKHEIR MOHAMED BARROW APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was jointly with others charged with three counts before Wajir Principal Magistrate's court. Count 1, he was charged with being in possession of a specified firearm without a firearms licence contrary to section 4(A) (1) (a) of The *Firearms Act*.
Particulars were that on the 2nd day of February, 2020 at about 2020 hours at Masalale roadblock in Eldas Sub-county within Wajir County, they were jointly found in possession of G3 assault rifle serial number A3 60xxxxx on board motor-vehicle registration number KBX xxx E without firearm certificate.
2. Count two, he was charged with being in possession of ammunition without holding a firearm certificate in Force at the time contrary to section 4 (2) (a) as read with Section 4(3) (a) of the *Firearms Act*. Particulars were that on the 2nd day of February, 2020 at Masalale roadblock in Eldas Sub-county within Wajir county were jointly found in possession of four (4) live rounds of ammunition of 7.62 by 51 mm caliber.
3. Count 3 he was charged with being in possession of Government stores contrary to section 324(2) as read with section 36 of the *Penal code*. Particulars were that on the 2nd day of February, 2020 at Masalale road block in Eldas Sub-county within Wajir county, were jointly found to be in possession of Government stores namely three (3) swagger –canes belonging to the Administration police and the Kenya Administration on board motor-vehicle registration number KBX xxx E suspected of having been unlawfully obtained.



4. Upon returning a plea of -not guilty, the matter proceeded to full trial. Consequently, the applicant was convicted and sentenced to 7 years' imprisonment in count one; count two and count three for 3 months imprisonment and sentences to run concurrently.
5. Consequently, the applicant moved this court vide chamber summons filed on 29th August, 2023 seeking the court to consider reduction of his sentence by 1 year and 3 months being the period spent in remand custody.
6. In response, the State had no objection. I have considered the application herein and the response thereof. The applicant is seeking consideration of the period he spent in remand custody pursuant to Section 333(2) of the Criminal procedure code.
7. Section 333(2) provides as follows;
 - (2) 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.
8. It is trite that before imposing sentence in a Criminal trial, the trial court must take into consideration the period spent in remand custody. see Abolifathi Mohammed and Another -vs- Republic (2018) eKLR.
9. In the instant case, the applicant was arrested on 2-2-2020. He was arraigned in court on 14-2-2020 and then released on bond on 26-2-2020. He remained on bond until 21.10.2020 when he was convicted and sentenced. Clearly, he remained in remand custody from 2-2-2020 to 26-2-2020 translating to 24 days stay in remand custody.
10. In compliance to Section 333 (2) of the Criminal Procedure Code, he is entitled to 24 days' reduction from the sentence imposed. Accordingly, the application herein is allowed and the sentence reviewed so as to take care of the 24 days spent in remand custody. Accordingly, it is hereby ordered that when computing sentence, the applicant shall serve the imposed sentence less 24 days.

Right of appeal 14 days.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 31ST DAY OF OCTOBER, 2023.

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J. N. ONYIEGO
JUDGE

