

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA

PETITION NO. 109 OF 2020

DONALD A. SHIRAKU.....PETITIONER

VERSUS

THE DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

JUDGMENT

1. The accused, **Donald Amwayi Shiraku** alias **Kandamaji** faces a charge of murder contrary to Section 203 as read with Section 204 of the Penal Code. The particulars of the charge are that:

“On the night of 17th/18th October 2007 at Kalalani village, Mwavumbo Location in Kwale District, within Coast Province murdered ATHUMANI BAKARI.”

2. The Petitioner was convicted and jailed to serve 20 years on 2/12/2011.

3. The Petitioner now seeks to be released to time he spent in remand from 30/10/2007 to 2/12/2011.

4. The Petitioner seeks for the four (4) years of the pre-trial custody under Section 333 (2) of the Criminal Procedure Code, which states that:

“Subject to the provisions of Section 38 of the Penal code, 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 the person convicted 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. It is clear that the law allows convict to have back time spent in remand.

6. this petition therefore has merit. The same is allowed. The Petitioner’s sentence shall be computed as from 30/10/2007.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 30TH DAY OF SEPTEMBER, 2021.

E. K. OGOLA

JUDGE

Judgment delivered via MS Teams in the presence of:

Petitioner in person

Ms. Anyumba for DPP

Ms. Peris Court Assistant