



REPUBLIC OF KENYA



KENYA LAW
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**Injiri v Republic (Miscellaneous Application E041 of 2024)
[2025] KEHC 2032 (KLR) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2032 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E041 OF 2024
S MBUNGI, J
FEBRUARY 17, 2025
IN THE MATTER OF SECTION 333(2) OF THE CPC**

BETWEEN

JARED KOITA INJIRI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged for the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* No. 3 of 2006, convicted and sentenced to serve life imprisonment.
2. He filed an appeal in this court, which appeal was heard and determined. The high court dismissed his appeal and he further filed an appeal at the court of appeal.
3. The court of appeal on 7th December 2018 set aside the life imprisonment and substituted it to 30 years' imprisonment from the date of sentence by the trial court.
4. The Applicant has now filed a notice of motion application seeking the for the court to consider the period he spent in custody under section 333 (2) of the CPC.
5. None of the parties filed their submissions.

Analysis And Determination

6. The Applicant had been charged and convicted at the senior principal Magistrate's court at Mumias in criminal case No 520 of 2010 for the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the *sexual offences Act* No. 3 of 2006,
7. The trial court convicted him and sentenced him to life imprisonment.



8. Being dissatisfied with the conviction and the sentence, he appealed at the High court at Kakamega in criminal Appeal no. 10 of 2011. The appellant court found that the protection and the evidence at the trial court was solid and dismissed the appeal for lack of Merit.
9. The applicant still being dissatisfied with the decision of the High court filed a second appeal at the Court of Appeal in Kisumu in criminal Appeal No. 93 of 2014.
10. The court of appeal heard the appeal and reduced the applicant's sentence from life imprisonment to thirty (30) years. The applicant has now filed an application based on Section 333(2) of the Criminal Procedure Code stating that the court did not into account the time spent in custody.
11. Section 333(2) provides: -

“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.”
12. It is important to note that the applicant in his appeal at the High court requested the court to take into consideration the time he had spent in custody pursuant to section 333 (2) of the Criminal procedure code which the high court failed to address.
13. The provisions of section 333(2) of the Criminal Procedure Code was the subject of the decision in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR where the Court of Appeal held that: -

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”
14. The same court in *Bethwel Wilson Kibor v Republic* [2009] eKLR expressed itself as follows: -
15. “By proviso to section 333(2) of the Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account of the period spent in custody. Ombija J, who sentenced the appellant did not specifically state that he had taken into account the 9



years' period that the appellant had been in custody. The appellant told us that as at 22nd September 2009 he had been in custody for 10 years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held."

16. According to The Judiciary Sentencing Policy Guidelines:

"The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial."

17. The Applicant was arrested on 14th May 2010 and convicted on 25th January 2011. By virtue of Section 333(2) of the *Criminal Procedure Code*, this duration ought to have been considered during sentencing.

18. Notably, the Applicant has not contested the sentence of 30 years from the court of Appeal, he only seeks to have the duration he spent in custody be taken into account which is his legal entitlement in my considered view.

19. In the circumstances and taking into account that the applicant was arrested on 14th May 2010 and sentenced on 25th January 2011 hence he was in custody for 8 months 11 days.

20. I find that this application under Section 333(2) has merit and it is hereby allowed.

21. Taking into consideration the months the applicant was in custody I reduce the sentence by 8 months 11 days.

22. It is so ordered.

23. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 17TH DAY OF FEBRUARY, 2025.

S.N MBUNGI

JUDGE

In the presence of :

Court Assistant – Elizabeth Angong'a

ODPP-Loice Osoro present online.

