



**Jumale v Republic (Miscellaneous Criminal Application E040 of 2024)
[2025] KEHC 1426 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E040 OF 2024
JN ONYIEGO, J
FEBRUARY 20, 2025**

BETWEEN

HUSSEIN JUMALE APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against sentence dated 02-09-2024 delivered
by Hon. J. Omwange (PM) Garissa Criminal Case No.1079 of 2021)*

RULING

1. Through a chamber summons 16-12-2024, the applicant seeks that the period spent in custody pending trial be considered.
2. From the record, the applicant was jointly with another charged with the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#). The particulars of the offence were that on the night of 10.09.2021 at about 1930hrs at Madogo area, Tana North Sub – county within Tana River County jointly with another not before the court while armed with dangerous weapons namely, knives they robbed Alice Katunga Munyoki of her mobile phone make D- light valued at Kes. 14,500, a handbag valued at Kes. 2200/- which contained cask Kes. 5,000/- all valued at 21,700/- and at the time of the robbery threatened to use actual violence against the said Alice Katunga Munyoki.
3. He also faced a second Count to wit robbery with violence contrary to section 296(2) of the [Penal Code](#). The particulars were that on the night of 10.09.2021 at about 1930hrs at Madogo area, Tana North Sub – county within Tana River County jointly with another not before the court while armed with dangerous weapons namely, knives they robbed Joseph Mbunge of his mobile phone make Tecno Y-1 valued at Kes. 6,500/- and at the time of the robbery threatened to use actual violence against the said Joseph Mbunge. Upon conclusion of the trial, the court acquitted him of the charge of Robbery



and instead convicted him on a lesser charge of stealing and sentenced him to a fine of kes 50, 000/= in default serve 12 months in prison.

4. During the hearing of the application, parties submitted orally whereby the applicant urged that the orders sought in the application be allowed as prayed. On the other hand, Mr. Okemwa, the learned counsel for the respondent submitted that the orders sought could not issue as the trial court considered time spent in custody when meting out the sentence. He prayed that the application be dismissed for want of merit.
5. The proviso to Section 333(2) of the *Criminal Procedure Code* obligates a trial court to consider time already spent in remand custody. The duty to take into account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms was acknowledged by the Court of Appeal in the case of Bethwel Wilson Kibor vs Republic [2009] eKLR.
6. It therefore follows that it is mandatory that the period which a convict had been held in custody prior to being sentenced ought to be considered in meting out the sentence.
7. Having perused the record, the applicant herein was convicted and during sentencing, the court noted as follows:

‘The court considers mitigation and that each of the convicts as 1st offenders. I note the sentiments of the convicts with regard to payment of the stolen items. The convicts are not remorseful. I have noted that each of the convicts has been in custody since the matter was filed on 13.09.2021.’ Having taken the duration into account, I hereby sentence each of the convicts to pay a fine of Kes. 50,000/- in default 12 months in jail for each count.’

8. From the above statement, I agree with counsel for the respondent that indeed the trial court considered time spent in custody by the applicant. Consequently, I find the application unmerited hence dismiss it.

DATED, SIGNED AND DELIVERED THIS 20TH DAY OF FEBRUARY 2025

J. N. ONYIEGO

JUDGE

