



**Muhatia v Republic (Miscellaneous Application E030 of 2024)
[2025] KEHC 1555 (KLR) (17 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1555 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E030 OF 2024**

S MBUNGI, J

FEBRUARY 17, 2025

IN THE MATTER OF BENARD EANDA VS. REPUBLIC CRA NO.6 OF 2020

AND

**IN THE MATTER OF AHMED ABOIFATHI MOHAMMED
AND AOTHER VS. REPUBLIC (2018) EKLR**

AND

IN THE MATTER OF ROBBERY WITH VIOLENCE C/SEC. 296 (2) OF THE PENAL CODE

BETWEEN

KEVIN ACHEVI MUHATIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant had been charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the *Penal Code*.
2. He was tried convicted and sentenced to serve 20 years imprisonment.
3. He has filed a notice of motion application seeking that the court considers reducing his sentence and consider the 4 years he had spent in custody pursuant to section 333 (2) of the *Criminal Procedure Code*
4. The application was premised on his sworn affidavit where he stated that he was arrested for robbery with violence and arraigned in the SPM court at Kakamega in Cr Case No.3315 of 2019 hence tried, convicted and sentenced to serve 20 years' imprisonment delivered on 28/4/2023.



5. That the Hon. Court be pleased to allow his humble application seeking only for orders to reduce the 4 years he had spent in custody from the sentence of twenty (20) years pursuant to section 333(2) of the criminal procedure code and under No 7 of 2007.
6. He stated that he has not appealed anywhere in court and does not challenge the conviction and sentence only the time he had spent in custody.

Analysis and determination

7. Section 333(2) of the *Criminal Procedure Code* provides: -

“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 where the person sentenced under sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
8. It is clear from the above proviso that the law requires courts while sentencing do take into account the period the accused spent in custody.
9. In the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR, the court expressed itself as follows: -

“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.”
10. 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.”
11. I have perused the judgment of the trial court on sentencing and note that the learned magistrate clearly stated clearly that she has taken into account the period the applicant has spent in custody which was since 2019.
12. In this case, the accused was arrested on 02/11/2019 and after the court tried and convicted him, he was convicted on 29/04/2023 hence he had been in custody for 4 years.



13. The trial court noted that the charge was a serious one and attracts a penalty of life imprisonment. The court took into account all these factors and sentenced the applicant to serve 20 years.
14. I find that the trial court correctly interpreted and applied the requirements under Section 333 (2) during sentencing. I further find that the sentence meted was not only correct, but was legal and proper as it factored in the period that the Applicant spent in remand custody while awaiting his trial as well as the severity of the offence.
15. Consequently, I find that the instant application is not merited and I therefore dismiss it.
16. It is so ordered.
17. 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 Mr Osoro present online.

