



**Malika v Republic (Miscellaneous Criminal Application
E072 of 2024) [2025] KEHC 2569 (KLR) (3 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2569 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E072 OF 2024**

AC BETT, J

FEBRUARY 3, 2025

BETWEEN

GODFREY MALIKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Godfrey Malika was convicted of the offence of causing grievous harm contrary to section 234 of the *Penal Code*.
2. The trial court in its Judgement dated 14th February 2024 found that the prosecution had proved its case against the Applicant beyond reasonable doubt. After analyzing the pre-sentence report dated 29th February 2024, the trial court sentenced the Applicant to a custodial sentence of 30 months (2 and a half years) after taking into consideration the time he had spent in custody.
3. The Applicant then filed an undated application urging this court to take into consideration the 30 months he has been in remand custody and review his sentence accordingly.
4. The Respondent prayed that the court relies on the lower court records for guidance.
5. Section 333(2) of the *Criminal Procedure Code* provides as follows:

“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.”



6. According to The [Judiciary Sentencing Policy Guidelines 2023](#):

“Section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. The guidelines apply to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.”
7. Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served. This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.
8. It is therefore mandatory that the trial court take into consideration the time that the Applicant spent in custody before sentencing.
9. I have carefully perused the lower court records and the Judgement delivered by Hon. E. Wasike (PM) on 6th March 2024. What is clear is that the trial court took into consideration the time the Applicant had been incarcerated together with the pre-sentencing report.
10. Further the Applicant has not provided any evidence as to why this court ought to interfere with the sentencing of the lower court.
11. It is trite law that an Appellate court should not interfere with the exercise of a trial court’s discretion on sentencing unless it is established that there was a real error on the application of the sentencing principles.
12. In the Court of Appeal case of *Shadrack Kipkoech Kogo v R.* Eldoret Criminal Appeal No.253 of 2003; cited in [Arthur Muya Muriuki v Republic](#) [2015] eKLR, it was stated that: -

“Sentence is essentially an exercise of discretion by the trial court and for this court to interfere it must be shown that in passing the sentence, the sentencing court took into account an irrelevant factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.”
13. The Applicant was convicted of an offence that attracts a life sentence. The trial court called for and considered the pre-sentence report. In its decision, the court considered all the circumstances and took into account the provisions of Section 333 of the [Criminal Procedure Code](#). The court did not err in principle.
14. The upshot is that the application is dismissed for lack of merit.
15. Those are the orders of the court.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 3RD DAY OF FEBRUARY 2025.

A. C. BETT

JUDGE

In the presence of:



The Applicant

Ms. Chala for the Respondent/State

Court Assistant: Polycap

