



REPUBLIC OF KENYA



KENYA LAW
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**Abdullahi v Republic (Criminal Revision E083 of 2023)
[2025] KEHC 3470 (KLR) (20 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3470 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E083 OF 2023
JN ONYIEGO, J
MARCH 20, 2025**

BETWEEN

UGAS ABDULLAHI APPLICANT

AND

REPUBLIC RESPONDENT

(Being revision application against the sentence delivered by Hon. Mugendi Nyaga (SRM) Wajir PM's court in criminal case number o223 of 2020)

RULING

1. The applicant was tried and convicted of the offence of grievous harm contrary to section 234 of the *Penal Code*. The particulars of the offence being that on 05.08.2020 at Biyamadhow location in Habaswein Sub County within Wajir county he caused grievous harm to Kali Ali.
2. He pleaded not guilty and the matter proceeded to full trial. He was consequently found guilty, convicted and sentenced to serve 10 years in jail.
3. He filed this application seeking for orders that this Honourable Court be pleased to consider the time already spent in lawful remand custody and thus review his sentence in the same manner. The application in a nutshell was hinged on section 333(2) of the *Criminal Procedure Code* and The case of *Abamad Abolfadhi Mohamed & another v Republic* [2018] eKLR where the court considered the time already spent in custody before sentence by the applicant. He urged that this Honourable Court further review the sentence downwards considering the fact that he has since reformed while in custody.
4. The application was canvassed orally where the applicant urged that sentence is now computed from the time of arrest and further, time spent in custody during the determination of the case. He urged that it is not only mete but also just that this court considers the time that he spent in lawful custody.



5. Mr. Okemwa, the learned prosecutor did not oppose the application but the foregoing notwithstanding, the court will proceed to determine the application on its merits.
6. I have considered the application herein together with the submissions by both parties. The only issue for determination is whether the applicant is entitled to review of sentence under Section 333(2) of the Criminal Procedure Code.
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 provision that the law requires courts to take into account the period the convict spent in remand custody.
9. The provision of Section 333(2) of the Criminal Procedure Code was the subject of the decision in Abamad Abolfathi Mohammed & Another vs Republic [supra] 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...
10. This court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate court. Article 165(6) and (7) provides: -
 - 6). The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
 - 7). For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.
11. The applicant was arrested on 05.08.2020. He was convicted and thereafter sentenced on 30.12.2020. By virtue of Section 333(2) of the Criminal Procedure Code, this duration ought to have been considered during sentencing noting that he was in custody all that time. I therefore find that the application is merited and the same is allowed with orders that the period of 145 days spent in remand custody be deducted when computing his sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 20TH DAY OF MARCH 2025

J. N. ONYIEGO



JUDGE

