



**Mohamed v Republic (Miscellaneous Criminal Application
E019 of 2025) [2025] KEHC 10251 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10251 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E019 OF 2025**

**JN ONYIEGO, J
JULY 17, 2025**

BETWEEN

ABDIAZIZ ADAN MOHAMED APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of Hon. Ndeda SPM
delivered on 6-1-2015 in criminal case No.1104 of 2012 Garissa CM's court)*

RULING

1. The applicant was charged with six counts of engaging in acts intended to cause grievous harm contrary to section 231 (f) of the *Penal Code*. The particulars were that on 25th day of June 2012 he with others not before the court they unlawfully did grievous harm to Victor Sikuti (count 1), Dismas Mogaka (count2), Ernest Karugu (count 3), Bashir Gul (count 4). Muktar(5) and Mohamed Osman(count 6) by detonating an improvised explosive device.
2. Counts 7,8, and 9, he was charged with engaging in criminal activity c/s 3(a) as read with section 4(1) of the *Organized Crimes Act* of 2012, malicious damage to property c/s to 339(1) as read with Section 339(2)(b) of the *Penal Code* and residing outside the designated areas without permission from authority contrary to Section 25 (f) of the *Refugee Act* No.13 of 2006 respectively.
3. Having denied the charge, the case proceeded to full trial. Upon conclusion of the trial, he was convicted of counts I, II, VIII and IX. Consequently, he was sentenced to life imprisonment for each of the counts I and II. Counts VIII and IX he was discharged under section 35(i) of the *Penal Code*
4. Dissatisfied by both the conviction and sentence, he lodged an appeal vide criminal appeal No.2 of 2015. Upon considering the appeal, his sentence was reduced from life imprisonment to 30 years imprisonment for each count to run concurrently from the date of sentence.



5. Undeterred, he moved to this court again vide a notice of motion dated 28-04-2025 seeking the court to take into account the period spent in remand custody under section 333(2) of the CPC. In response, counsel for the respondent urged the court to take into account the same if it was not considered.
6. I have considered the application herein which is not opposed. The application is anchored under section 333(2) of the CPC which provides that when imposing sentence, a trial court ought to take into account the period spent in remand custody prior to sentence. See Abamad Abolfathi Mohamed & another vs Republic (2018) eKLR where the court emphasized on the need to take into account the period spent in remand custody when imposing sentence. Similar position is stipulated in the judiciary policy guidelines on sentencing 2023.
7. From the record, the applicant took plea on 30-07-12 and remained in custody till 6-1-2015 when he was sentenced. Therefore, he was held in remand custody for a period of 2 years and 5 months 24 days. Since the trial court gave life imprisonment, there was no need to compute the period spent in remand custody. Therefore, the order being challenged and sought to be revised is that of the high court which reduced the sentence from life imprisonment to 30 years to start running from the date of sentence. Ideally, the omission by the high court can only be corrected by the court of appeal.
8. Had the lower court imposed a specific period of imprisonment, I would have found room to interfere. The applicant should be satisfied by the new sentence and complete serving. To that extent the application is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JULY 2025.

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J. N. ONYIEGO

JUDGE

