Mumbo v Republic (Miscellaneous Criminal Application E025 of 2025) [2025] KEHC 10119 (KLR) (11 July 2025) (Ruling)

Neutral citation: [2025] KEHC 10119 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT NYERI

MISCELLANEOUS CRIMINAL APPLICATION E025 OF 2025

MA ODERO, J

JULY 11, 2025

BETWEEN

JASHON GAN MUMBO ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. The Applicant herein Jashon Gan Mumbo had been charged in the Lower Court with the offence of Stealing Contrary To Section 268 (1) As Read With Section 275 Of The *Penal Code*.

2. The Applicant entered a plea of 'Not Guilty' to the charge. The hearing commenced on 8th February 2024. On 13th February 2025 the learned Chief Magistrate Hon Nderitu delivered her judgment in which she fined the Applicant Kshs. 300,000/= in default to serve two (2) years imprisonment.

3. The Applicant has filed this application seeking to have the period which he spent in pre-trial detention factored into his sentence.

4. I have carefully considered this application which was not opposed by the learned state counsel.

5. Section 333(2) of the *Criminal Procedure Code* Cap 75 Laws of Kenya 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." [Own emphasis]

6. It is clear from the above proviso that the law requires courts to take into account the period a convict had spent in custody.

7. In the case of *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR the Court of Appeal held thus:-

> " 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 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. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the *Criminal Procedure Code* was introduced in 2007 to give court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants' sentence of imprisonment to run from the date of their arrest on 19th June 2012." [Own emphasis]

8. The *Judiciary Sentencing Policy Guidelines contained in the Sentencing Policy Guidelines* Clauses 7:10 and 7:11 provide as follows:-

> " 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."

9. A perusal of the file from the lower court reveals that this Applicant was arrested on 4th October 2023. He was sentenced on 13th February 2025. In the circumstances the Applicant who (was not released on bond) spent a total of fifteen (15) months in remand. This period of fifteen (15) months ought to have been considered by the trial court when imposing sentences.

10. I note that the learned trial magistrate did in fact note and did take into account the period which the Applicant has spent in remand. In sentencing the Applicant the trial magistrate stated as follows:-

> " Considering all these, accused is hereby fined Kshs. 300,000 in default two (2) years imprisonment. In setting the default sentence at two (2) years, I have given credit to the one year four months accused has been in remand custody" [Own emphasis]

11. I therefore find no merit in this application. The same is dismissed in its entirety. The applicant will serve the sentence as imposed by the trial court.

DATED IN NYERI THIS 11TH DAY OF JULY 2025

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MAUREEN A. ODERO

JUDGE