



**Otieno v Republic (Miscellaneous Criminal Application
E019 of 2025) [2025] KEHC 10837 (KLR) (1 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10837 (KLR)

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

JM OMIDO, J

JULY 1, 2025

BETWEEN

NYAGUDI BRAXTONE OTIENO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein, vide the Notice of Motion dated 17th January, 2025 seeks an order for the review of his sentence, so that the period that he spent in custody awaiting conclusion of his trial is taken into account, in line with Section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya, which provides that:

333(2) Subject to the provisions of Section 38 of the *Penal Code* (Cap. 63) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.
2. I have gone through the record of the lower court and note that the Applicant took plea on 21st October, 2021 and was remanded in custody. He remained in custody until his case was concluded. He was ultimately convicted and thereafter sentenced to serve imprisonment for 7 years on 29th November, 2022.
3. It is clear from the record of the trial court that the 404 days that he remained in custody while his trial proceeded were not taken into account by the trial court, as provided for under Section 333(2) of the *Criminal Procedure Code*.



4. The Court of Appeal in *Abamad Abolfatbi Mohammed & Another v Republic* [2018] eKLR held that:

“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...”

5. The *Judiciary Sentencing Policy Guidelines* provides that:

“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.”

6. From the authority and the text above, the trial court should have ordered that the sentence of imprisonment for 7 years runs from 21st October, 2021 being the date that the Applicant took plea and was remanded in custody.

7. In the result, and considering the foregoing, the Applicant’s application is merited. I allow it and review the sentence only to the extent that the sentence of 7 years imprisonment shall run from 21st October, 2021.

8. This file is closed.

DELIVERED (VIRTUALLY) DATED AND SIGNED THIS 1ST JULY, 2025.

JOE M. OMIDO

JUDGE

Applicant: Present, virtually.

Respondent: Ms. Muema.

Court Assistants: Mr. Ngoe & Mr. Juma.

