



REPUBLIC OF KENYA



KENYA LAW
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**Sharamo v Republic (Criminal Appeal E012 of 2024)
[2025] KEHC 12985 (KLR) (Crim) (18 September 2025) (Judgment)**

Neutral citation: [2025] KEHC 12985 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ISIOLO
CRIMINAL
CRIMINAL APPEAL E012 OF 2024
SC CHIRCHIR, J
SEPTEMBER 18, 2025**

BETWEEN

ABDULLAHI HUSSEIN SHARAMO APPELLANT

AND

REPUBLIC RESPONDENT

(Being an Appeal against the Judgment of Hon. L. Mutai delivered on 9th July 2024 in Isiolo Chief Magistrate's court criminal case No. E044 of 2022)

JUDGMENT

1. The appellant was charged with the offence of being in possession of a firearm without a fire arm certificate contrary to section 4(A) of the firearm Act(Cap 114 Laws of Kenya.) The particulars of the charge were that on 4th May, 2022 at around 21:00 hours at Merti junction, along Isiolo – Moyale Highway, in Samburu East Sub- County within Samburu County without reasonable excuse had in possession of a firearm make EKOL P29 SERIAL No. EP-190125630 without a firearm a firearm certificate.
2. On the 2nd count he was charged with being in possession of ammunitions without a firearm certificate contrary to Section 4 of the Firearm Act (Cap 114, Laws of Kenya.) The particulars of the 2nd charge were that on 4th May 2022 at around 21 00 hours at Merti Junction, along isiolo – Moyale Highway in Samburu East Sub County without a reasonable excuse had in his possession of 4 rounds of ammunition of 9 mm without a firearm certificate.
3. He was convicted on both counts and sentenced to 4 years on count 1 , and 2 years on the 2nd count. The sentences were ordered to run concurrently. He was aggrieved by the conviction and sentence and moved to this court on appeal.



Petition of Appeal

4. The appellant filed the petition of appeal and later amended it. In the amended grounds he has challenged the lower court decision on one ground only, namely “that the learned magistrate erred in law and fact by not observing the mandatory provisions of Article 50(2) (p) of *the Constitution* and Section 333 (2) of The Criminal Procedure Code”
5. The appeal was canvassed by way of written submissions.

Appellant’s submissions

6. The appellant submits that the trial court did not comply with the provisions of Section 333 (2) of the criminal procedure code (CPC) when meting out the sentence; that this constituted an infringement of his right under Article 50(2) of *the Constitution*. He states that he spent 8 months and 20 days in remand before being released on bond and that consequently ,he was entitled to have the said period be discounted from his sentence. In this regard he has relied on the decision of Ahmed Abolfathi Mohammed & Another vs. Republic (2018) eKLR and the case of Bethwel Wilson Kobor Vs. Republic (2009) eKLR

Respondent’s submissions

7. The Respondent concedes to the appeal, and states that the appellant was entitled to the reduction of the sentence for the period up to 19/1/2023.

Determination

8. Section 333(2) of the CPC provides as follows : ‘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.’
9. Further Paragraph 2.3.18 Sentencing Guideline (2023) States

“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. This also applies 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”.

And

Paragraph 2.3.19 of the same guidelines state:

“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 (see GATS at Part V). 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”. (Emphasis Added)



10. The 2023 judiciary sentencing policy guidelines has brought clarity on what on what is expected of a trial court. It is no longer enough for the trial court to only record, for instance, that 'the period spent in custody has been considered'. It must go further to ascertain the period spent in custody and lessen the sentences meted out by the ascertained period
11. Looking at the trial record in this case, it is obvious that the trial magistrate did not factor in the period the appellant had spent in custody. Consequently, there was an error in principle, and this court has a reason to interfere with the sentence.
12. The appellant was arraigned in court on 6th May, 2022. He stayed in custody until 26.01.2023 ,when he was released on bond. He therefore spent 8 months and 19 days in custody. This is the period that ought to be discounted from the sentence .
13. In conclusion, the appeal succeeds. The sentence of the trial court is varied to the extent that the sentences of 4 years and 2 years is hereby discounted by 8 months and 19 days. For avoidance of doubt, the sentences do run concurrently, as ordered by the trial court.

DATED SIGNED AND DELIVERED AT ISIOLO THIS 18TH DAY OF SEPTEMBER 2025

S. CHIRCHIR

JUDGE .

In the presence of:

Roba Katelo – court Assistant

Abdullahi Hussein- The Appellant

Mr. B. Ngetich – for the Respondent.

