



**Said v Republic (Criminal Revision E159 of 2024)
[2025] KEHC 13196 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13196 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL REVISION E159 OF 2024
WM KAGENDO., J
SEPTEMBER 17, 2025**

BETWEEN

MUFAD FARRIS SAID APPLICANT

AND

REPUBLIC RESPONDENT

(Revision of sentence in Criminal Case No. 179 of 2020 at the Chief Magistrates Court Mombasa on 7th October, 2021 by Hon R. Amwayi (SRM))

RULING

1. By way of a Notice of Motion dated 24th October, 2023 brought under Sec 333 (2) of the Criminal Procedure Code, the applicant moved the court for orders that the period spent in remand custody be computed into ten (10) year sentence pursuant to the provisions of Section 333 (2) of the Criminal Procedure Code, and should the eventual computation result into a balance of three (3) years or less, he be granted probation orders.
2. The background is that the applicant was charged, convicted and sentenced for the offense of trafficking Narcotic drugs contrary to Sec 4 of the [Narcotic Drugs and Psychotropic Substances \(Control\) Act](#), 1994 and sentenced to ten (10) years in prison.
3. The instant application is propped on grounds that the period the applicant spent in remand custody was not computed in the ten (10) year sentence, whilst under Article 50 (2) (p) of the COK provides that an accused person should have the benefit of the least severe punishments of an offence.
4. The applicant relied on the authority in *Jona & 87 others vs Kenya Prison Service & 2 others* (2021) KEHC 457 (KLR).



Analysis and Determination

5. I have considered the application, noting that the same is not opposed by the respondent. Indeed, Article 50 (2) (p) (q) of the COK gives the Court the general power to review the decisions of the subordinate courts;

...

- (2) if convicted, to appeal to, or apply for review by, a higher court as prescribed
(q) by law.”

6. Equally, this court’s revisionary jurisdiction is provided for under Section 362 of the Criminal Procedure Code.

362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. The backdrop of the applicant’s case is that on the 25th of January, 2020 at ferry island area in Mvita sub-county within Mombasa county jointly with others not before court trafficked by conveying narcotic drugs namely heroine to wit 102 grams with a street value of Kshs.306,000/-. It is noteworthy that the applicant never appealed against the trial court’s decision, and in his words, he is not even interested in an appeal.

8. Regarding the sentence imposed by the trial court, the appellant complained that the sentence failed to consider and factor in the period which he was held in lawful custody pursuant to Section 333 (2) of the Criminal Procedure Code, wherein he was sentenced to 10 years imprisonment.

9. Section 333 (2) of the CPC provides that:

- (2) 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.

10. 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.

11. The Judiciary Sentencing Policy Guidelines states that:

7.10: 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.”

12. As per the trial court proceedings the applicant was arrested on 25th January,2020 and after trial, convicted on 7th October, 2022, where he remained in remand for a period of 2 years 8 months and 11 days.



13. It is trite that sentencing is at the discretion of the trial court, however the applicant was entitled to his right under Section 333(2) of the CPC and having not been accorded the same, the sentence herein was passed based on wrong principles and is therefore amenable to be interfered with by this court.
14. The applicant has as consequence pleaded that the period in remand be computed together with the time he has served, and the balance be served in a non-custodial sentence.
15. I have considered the Sentence Review Report by the Probation and Aftercare Service produced on 16th June, 2025. The simple calculations indicate that the applicant has been in custody for a total of 5 years, 4 months and 20 days cumulatively.
16. The prison rehabilitation and progress report indicated that the applicant has been trained in programs like talent nurturing, music and entertainment programs, horticultural farming and agri- business, Islamic religious studies, teachings and madrasa, and behavior change therapy and psychological counselling.
17. Further, the report incorporated the attitude of the applicant where the Principal Probation Officer, Mr. Mutisya Kioko noted that applicant showed remorse and strong resolve, a changed mind and looked forward to be a law abiding and to preach peace and harmoniously co-existence in future.
18. Similarly, the community attitude through the area chief, elders and nyumba kumi chairperson and members expressed positive notion that the applicant will never revert back to criminal behavior and are more than willing to reintegrate him in the society and assist in his resettlement.
19. I am reminded by the International Covenant on Civil and Political Rights of 1966, which Kenya ratified in 1972 and therefore forms part of Kenyan law pursuant to Article 2(6) of the COK, that Article 10(3) of the Covenant admonishes that— “[t]he penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”
20. I am further resonate with the case of in the case of John Chidia Lwaina vs Republic CA 29 of 2020 where it was held as follows; -

...I have also considered the fact that the appellant took imprisonment positively and took advantage of opportunities available in prison to reform and gain skills which will help him impact on the society positively. I have considered his age. In my view, the appellant will be more beneficial to his family and society while out of prison. I note that the appellant has already served 6 years imprisonment. He has served two-thirds of the sentence- From his submissions and certificates availed to Court, there is no doubt that he has reformed. I am of the view that the period he has served in prison is sufficient”.
21. In this instance the applicant has served just under 6 years of his 10 years custodial sentence and taking into account the prison rehabilitation and progress report, he has considerably received training in several programs to boost his socio-economic empowerment. Further, his remorse and strong resolve to benefit the community is commendable, coupled by the support by the community to reintegrate him, I am of the view that at his youthful age of 28 years, he will be more beneficial to his family and society while out of custody. It serves no purpose to continue incarcerating him. He has already served the purpose of a sentence of rehabilitation and reformation.
22. Accordingly, the applications succeed. I find that the applicant has served sufficient sentence, and I order that he be forthwith set free unless otherwise lawfully held.

Orders accordingly.



**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 17TH DAY OF
SEPTEMBER 2025.**

W.K. MICHENI

JUDGE

In the presence of;

For the Applicant in person

For the Respondent...Mr Ngiri And Mr Sirima

Court Assistant.....Bebora

Signed By/For:

HON. LADY JUSTICE WENDY MICHENI

