



**Madumadu v Republic (Criminal Revision E070 of 2023)
[2024] KEHC 1064 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1064 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E070 OF 2023
M THANDE, J
FEBRUARY 2, 2024**

BETWEEN

GLYNN GEORGE MADUMADU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an application filed on 1.9.23, the Applicant seeks that the period of 11 months spent in remand custody be considered as part of his 5-year sentence that was imposed upon him, in Mariakani Criminal Case No. E091 of 2022. The applicant states that he was arrested on 3.5.22 and convicted on 4.4.23. The applicant alleged that the trial court did not put into consideration the period spent in custody as required under the provisions of paragraph 7.11 of the Sentencing guidelines of 2016.
2. The respondent did not object to the application.
3. The lower court record shows that the applicant was charged with the offence of attempted arson contrary to section 333(a) of the *Penal Code*, which carries a sentence of 14 years on conviction. Following trial, the applicant was convicted and sentenced to 5 years imprisonment. The applicant’s complaint is that the trial court failed to take into account the period of 11 months he spent in custody from the date of his arrest to the date of his conviction and sentencing.
4. Section 333(2) of the *Criminal Procedure Code* 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.



5. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to take into account the period an accused spent in custody pending trial. The only way to ascertain that the period spent in custody during trial was taken into account when imposing sentence, is by looking at the record.
6. From the record, it can be seen that in sentencing, the trial Magistrate stated as follows:

I have considered the mitigation herein. However the accused person being a repeat offender, I shall cognizant of the duration spent in custody pending trial sentence him to imprisonment of five (5 years).
7. The learned magistrate considered the applicant's mitigation as well as the period the applicant spent in custody. Having done so, he also noted that the applicant was a repeat offender. I am satisfied that the trial Magistrate considered not only the mitigation of the applicant but also took into account the duration spent in custody pending trial. The claim by the applicant that this period was not taken into account is thus not true.
8. Accordingly, I find the application unmerited and the same is hereby dismissed.

DATED AND DELIVERED IN MALINDI THIS 2ND DAY OF FEBRUARY 2024

M. THANDE
JUDGE

