



REPUBLIC OF KENYA



**Njeru v Republic (Criminal Petition E001 of 2024)
[2024] KEHC 3799 (KLR) (18 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 3799 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL PETITION E001 OF 2024**

LW GITARI, J

APRIL 18, 2024

BETWEEN

FAKRA NJERU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of grievous harm contrary to Section 234 of the Penal Code in the Chief Magistrates' Court at Chuka. He denied the charge and a full trial was conducted. He was found guilty, convicted and sentence to serve seven years imprisonment.
2. He has filed a notice of Motion seeking an order that the time he spent in remand awaiting trial be considered and be taken into account to reduce the sentence.
3. The respondent does not oppose the application. They have urged the court to find that the applicant spent thirty eight (38) days in custody after which he was released on bail.
4. I have considered the application. Section 333(2) of the [Criminal Procedure Code](#) provides as follows:-
 - (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. 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 section requires that courts take into account the period the accused spent in custody awaiting trial at the time of passing sentence in order to reduce the sentence by the time spent in prison. The Court



of Appeal in the case of *Ahamad Abudfathi Mohamed & Another v Republic* (2018) eKLR stated that while considering Section 333(2) of the *Criminal Procedure Code*.

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.”

6. In *Bethwel Wilson Kibor v Republic* (2009)KLR the Court of Appeal held as follows:-

By the provision of Section 333(2) of the *Criminal Procedure Code* where a person sentence has been held in custody prior to that sentence the sentence shall take into account of the period spent in custody.”

7. Under the *Judiciary Sentencing Guidelines* it is provided 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 during trial. Failure to do so impacts on the overall period of detention which may result in excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by the offender, the court must take into account the period in which the offender was held in custody during the trial.”

8. The learned trial magistrate at the stage of sentencing did not indicate that she took into account the time the applicant had spent in custody.

9. The record shows that the applicant was arraigned in court on 4/2/2019. He was granted bond/bail of Kshs 50,000/- with a surety of a similar amount or a cash bail of Ksh 30,000/-. He signed a bond with surety and was released on 13/3/2019. The applicant spent a period of thirty eight days in custody. The sentence imposed should have therefore taken into account the 38 days the accused had spent in prison during the pendency of the trial.

Conclusion:

10. I find that the application has merits.

The sentence imposed on the accused shall be reduced by thirty eight (38) days.

The ruling be served on the officer-in-Charge Prison where the applicant is serving sentence.

DATED, SIGNED AND DELIVERED AT CHUKA THIS 18TH DAY OF APRIL, 2024.

L.W. GITARI

JUDGE

