



**Thuranira v Republic (Miscellaneous Criminal Application
E028 of 2023) [2024] KEHC 8228 (KLR) (5 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8228 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E028 OF 2023**

JN ONYIEGO, J

JULY 5, 2024

BETWEEN

ALEXENDER THURANIRA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was tried and convicted of the offence of obtaining goods by false pretenses contrary to section 313 of the *Penal Code*.
2. The matter proceeded to full trial whereby he was convicted and sentenced to pay a fine of ksh 100,000 in default to serve three years in jail.
3. Subsequently, he filed this application seeking for orders that this Honourable Court be pleased to consider the time already spent in lawful remand custody and thus review his sentence in the same manner. The application in a nutshell was hinged on section 333(2) of the *Criminal Procedure Code*.
4. Further reliance was placed on the cases of *Ahamad Abolfadhi Mohamed & another v Republic* [2018] eKLR and *Rwabuganda Moses v Uganda* (no citation) where both courts considered the time already spent in remand custody by the appellant. He urged that this Honourable Court further reviews the sentence downwards considering the fact that he has since reformed while in custody.
5. Mr. Owuor, the learned prosecutor opposed the application urging that the court not to allow the same. Counsel however did not offer any good reason to support his stand. The foregoing notwithstanding, the court will proceed to determine the application on its merits.
6. I have considered the application herein together with the submissions by both parties. The only issue for determination is whether the applicant is entitled to review of sentence under Section 333(2) of the *Criminal Procedure Code*.



7. Section 333(2) of the *Criminal Procedure Code* provides: -

“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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

8. It is clear from the above provision that the law requires courts to take into account the period the convict spent in remand custody before pronouncing its sentence.

9. The provisions of section 333(2) of the *Criminal Procedure Code* was the subject of the decision in *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR where the Court of Appeal held that: -

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced.

Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “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...

[Also See *Bethwel Wilson Kibor v Republic* [2009] eKLR and the Judiciary Sentencing Policy Guidelines].

10. This court is empowered by Article 165(6) of the *Constitution* of Kenya to review a decision by a subordinate court. Article 165(6) provides: -

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

11. The applicant was arrested on 17.06.2023 and was convicted and thereafter sentenced on 28.11.2023. By virtue of Section 333(2) of the *Criminal Procedure Code*, this duration ought to have been considered during sentencing. Having been sentenced to serve a period of three years, I find that a period of 5 months and 11 days be deducted from his sentence when computing sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 5TH DAY OF JULY 2024.

J. N. ONYIEGO

JUDGE

