



**Guyo v Republic (Criminal Appeal E024 of 2024)
[2024] KEHC 13764 (KLR) (7 November 2024) (Judgment)**

Neutral citation: [2024] KEHC 13764 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL APPEAL E024 OF 2024
JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

ABDIRASHID ALI GUYO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the conviction and sentence by Hon. H. M. Nyaberi-
CM in Garissa Criminal Case No. E568 of 2022 delivered on 14.3.2023)*

JUDGMENT

1. The appellant was charged and convicted with the offence of burglary contrary to section 304(1)(b) as read with section 304(2) of the Penal Code. The particulars were that on 28.09.2022 at around 2300hrs at Madogo Township within Tana River County, he broke and entered the dwelling house of one Salim Mohamed Jafah with intent to steal therein and did steal from therein one Samsung galaxy A12 mobile phone worth 14,500/- the property of the said Salim Mohamed Jafah.
2. He also faced an alternative charge of handling stolen property contrary to section 322(1)(2) of the Penal Code. The particulars were that on 28.09.2022 at around 2300hrs at Madogo Township within Tana River County, otherwise than in the cause of stealing dishonestly retained one Samsung galaxy A12 mobile phone knowing or having reason to believe it to be stolen.
3. He was convicted and thereafter sentenced to 3 years imprisonment.
4. The appellant has since filed this application seeking review of the sentence pursuant to section 333(2) of the Criminal Procedure Code. He urged this court to embrace section 333(2) of the CPC and take into account the time he had spent in remand custody.
5. I have considered the application herein and the response thereof. Section 333(2) of the Criminal Procedure Code provides as follows:



- (2) 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.
6. Similarly, '*The Judiciary Sentencing Policy Guidelines*' also require that the court should take into account the time spent in lawful custody in a case where the applicant had been in custody during the trial.
7. As was stated by the High Court of Malaysia in *Public Prosecutor vs Muhari bin Mohd Jani and Another* [1996] 4 LRC 728 at 734, 735: "...The object of revisionary powers of the High Court is to confer upon the High Court a kind of "paternal or supervisory jurisdiction" in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice..."
8. I note that the trial court while sentencing the applicant stated that the applicant had spent five months in lawful custody and that he was remorseful. But after that, he did not state when the sentence was to begin and whether the sentence had taken into account that period.
9. From the charge sheet, the applicant herein was arrested on 26.08.2022 and thereafter sentenced on 14.03.2023.
10. Therefore, the 6 months 2weeks and 2 days the applicant spent in custody shall be considered when computing the sentence..

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

