



**Mohamed v Republic (Miscellaneous Criminal Application
E015 of 2024) [2024] KEHC 13612 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13612 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E015 OF 2024**

**JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

KHADAR YUSSUF MOHAMED APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged and convicted for the offence of threatening to kill contrary to section 223(1) of the Penal Code and sentenced to 3 years' imprisonment.
2. The applicant has approached this court with an undated chamber summons seeking for orders that his sentence be deemed to have started from the time he was arrested and that he be present during the hearing of the suit. The application is supported by an annexed affidavit referenced as 'humble mitigation' where the applicant stated that upon being found guilty, he was convicted and thereafter sentenced to three years imprisonment.
3. He averred that he has since served two years and therefore a transformed citizen who is ready to join society. He urged that he has undertaken religious classes and therefore, fully transformed. He stated that he was arrested sometime in the month of September, 2022 and spent 11 months in lawful custody before he was sentenced. He prayed that the time spent in custody be included in computation of his sentence.
4. In view of his prayer, the only issue for determination is whether the applicant is entitled to review of sentence under Section 333(2) of the Criminal Procedure Code.
5. 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, been held in custody, the



sentence shall take account of the period spent in custody.”[Also see the case in Ahamad Abolfathi Mohammed & Another vs Republic [2018] Eklr].

6. Similarly, according to The Judiciary Sentencing Policy Guidelines: “The provision to section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already spent in remand 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.
7. The applicant herein was arrested on 24.09.2022 and sentenced on 20.09.2023. Notably, the applicant spent a period of 11 months, 3 weeks and 4days in a lawful custody which in my view ought to be accounted for. As such, I concur that the same ought to be deducted from the three year sentence. Accordingly, the period spent in remand custody shall be deducted when computing sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

