



REPUBLIC OF KENYA



KENYA LAW
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**Mohamud v Republic (Criminal Revision E080 of 2024)
[2024] KEHC 13676 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13676 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
CRIMINAL REVISION E080 OF 2024
JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

MOHAMED MOHAMUD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged and convicted in respect of two counts as follows:

Count I: Being in possession of a firearm without a firearm certificate contrary to section 4(2) of *Firearm Act* Cap 114 Laws of Kenya. The particulars were that 1. Mohamed Mohamud Lohos alias Funika 2. Abdi Mohamed Lohos on 16.07.2019 at Mathagasi area in Dadaab Sub County within Garissa County they were jointly found in possession of a firearm namely AK-47 rifle serial No. not visible without a valid firearm certificate.

2. In respect to count two, they were jointly charged with being found in possession of five rounds of ammunition c/s 4(2) of the *firearms Act*. He was thus sentenced to 10 and 5 years' imprisonment in Count 1 and II respectively and both sentences to run concurrently.

3. The applicant has since filed this application seeking to have the time spent in lawful custody during the hearing of his case to be considered in computation of his final sentence pursuant to Section 333(2) of the *CPC*. Mfr. Kihara for the state did not oppose the application.

4. I have considered the application herein which is not opposed. The court is being call upon to determine the application of section 333(2) of the *Criminal procedure code* which 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.

5. The above notwithstanding, I am also guided by the '*The Judiciary Sentencing Policy Guidelines*' which 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. Further, that a failure to do so would impact on the overall period of detention which would result in excessive punishment that in turn would be disproportionate to the offence committed.[Also see the Court of Appeal on *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR].
6. It follows then that the court should state that indeed the time spent by the accused in custody has been considered and that it has factored it in the final sentence. Failure to do so means that the period has not taken into consideration.
7. It is my view that the applicant ought to have been charged with the offence as enumerated under section 4A of the *Fire Arms Act* instead of section 4(1)(a). The same notwithstanding, it is clear that no prejudice was suffered by the applicant to warrant the charges herein be set aside as he understood well the charges he faced. The same notwithstanding, he pleaded guilty to the said charges. The punishment prescribed by the law for the offence for which the applicant was charged is as follows:
8. Offences relating to specified firearms
 - (1) Notwithstanding section 4, any person who—
 - (a) is found in possession of any of the specified firearms without a licence or permit or other lawful justification; or
 - (b) being licensed to possess, hold, trade in or otherwise have custody of any of the specified firearms, ammunition or parts of such firearm or ammunition hires or otherwise unlawfully permits another person to take possession of or use that firearm or ammunition to advance the course of organized criminal activity, commits an offence under this Act and is liable to imprisonment for life.
 - (2) For the purposes of this section, “specified firearm” means any of the following firearms—
 - (a) AK 47;
 - (b) G3;
 - (c) MP 5; and
 - (d) such other similar firearms as may be specified by the Minister by order published in the Gazette
9. The punishment stipulated by the statute is that any person found culpable of the said offence under this section is liable to imprisonment for life.
10. The applicant was arrested on 16.07.19 and convicted on his own plea of guilty and thereafter sentenced on 10.09.2019. In my view, the court ought to have directed the applicant’s sentence of imprisonment to run from the date of arrest.
11. In conformity with Section 333(2) *Criminal Procedure Code*, and considering the period he was in remand custody which is 1month and 3 weeks the sentence shall be computed to include the said period.

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



J. N. ONYIEGO
JUDGE

