



**Kimeu v Republic (Criminal Revision E048 of 2024)
[2024] KEHC 16793 (KLR) (9 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16793 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E048 OF 2024
NIO ADAGI, J
DECEMBER 9, 2024**

BETWEEN

ALPHONCE MUSYOKI KIMEU APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a Revision from the Judgment of Hon. D. Kioko (RM) in
Kangundo CMCR Case. No. E1209 of 2023 delivered on 14/02/2024)*

RULING

1. The Applicant, Alphonce Musyoki Kimeu, has filed an undated Notice of Motion application. The same is for revision under Section 333(2) of the [Criminal Procedure Code](#) and it is supported by the affidavit of the Applicant. The application seeks that the period that the Applicant spent in remand custody be accounted for in the sentence.
2. The Respondent has not opposed this application but asked the court to peruse the lower court file record and consider the application.
3. Section 333(2) of the [Criminal Procedure Code](#) provides that:-

“Subject to provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence from, and to include the whole of the day on which it was pronounced, except when 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”.
4. The record of the lower court indicate that the applicant was first arraigned before the court on 6/12/2023. He faced a charge of threatening to kill contrary to Section 223(1) of the [Penal Code](#).



Though he was placed on bail, he was not able to secure his release and it was not until 31/1/2024 when he changed plea and pleaded guilty. The Act prescribes for a sentence of 10 years imprisonment; however, the trial court noted the mitigation of the Applicant as well as the need to have him reform. Consequently, he was sentenced to 3 years imprisonment.

5. I have perused the sentencing provisions of the lower court. The same do not give any directions on the period the Applicant spent in custody as he awaited the determination of his case. The trial court ought to have accounted for this period in the sentence.
6. He was therefore in custody for a period of approximately 2 months 9 days.
7. Being entitled to this period being accounted for, I allow the Applicant's application (undated) and filed herein, and order that the Applicant does serve the sentence imposed against him by the trial court less 2 months 9 days, a period he remained in custody awaiting the outcome of his case.
8. It is so ordered.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 9TH DECEMBER 2024

NOEL I. ADAGI

JUDGE

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 9TH DECEMBER 2024

In the presence of:-

..... for Appellant
..... for Respondent
..... Court Assistant

