



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRREV/E183/2024

JUMA PAUL MBAJI VS THE REPUBLIC

RULING

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MOMBASA**

**REVISION APPLICATION NO. E183 OF 2024.**

JUMA PAUL MBAJI..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

**RULING**

**(Revision of sentence in Mombasa Magistrate Criminal Case NO. 1477 OF 2022 delivered on 15<sup>th</sup> December 2022)**

The undated homemade Notice of Motion prepared by the Applicant is brought under Section 333 (2) of the Criminal Procedure Code. The Applicant prays for orders that the Honorable Court the period spent in remand custody be computed into the ten (10) years sentence awarded by the trial court. That in the event the computation result into a balance of three years or less the Court to grant him probation orders.

The Applicant was charged, convicted and sentenced to 10 years' imprisonment for the offence of Robbery with Violence contrary to section 296 (2) of the Penal Code vide Mombasa Magistrate Criminal Case number 1477 of 2022. In his affidavit in support of the application, the applicant claims to have been in remand custody from 30<sup>th</sup> June 2021 to 15<sup>th</sup> December 2022 when the sentence was passed. He is aggrieved that the period spent in remand was not considered into the



computation of the sentence awarded by the trial court.

The State Department for correctional service, through the officer in charge Manyani maximum security prison wrote the applicant's prison progressive report, where it was recorded that in his period of incarceration the applicant has undergone rehabilitation programs such as farming which he currently practices. He has undergone spiritual counseling programs and has developed self-control in his behaviors. He is a responsible inmate who actively participates in sports activities. He has reformed and it may be necessary to consider his application.

I have considered the application and the affidavit in support of the same. The Respondent has not opposed it nor submitted on the application, as at the time of making this determination. The issue for consideration is whether the application has merit and what orders this court should make.

This court is mandated to consider the period the Accused person spent in remand while his trial was on going in line with **Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya)**.

The said **Section 333(2) of the Criminal Procedure Code** provides that: -

***“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”***

Further, **Clauses 7.10 and 7.11 of the Judiciary Sentencing Policy Guidelines** provide that: -

***“The proviso to section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in 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. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”***

The requirement under **Section 333(2) of the Criminal Procedure Code** was restated by the Court of Appeal in **Ahamad Abolfathi Mohammed & Another vs Republic [2018] eKLR**.

Instantly I have perused the trial court's record. The applicant was first arraigned in court on 30<sup>th</sup> June 2021. Indeed, the applicant could not raise the bond terms and he remained in custody throughout his trial. The application is merited. The sentence to run from 30<sup>th</sup> June 2021 when the Applicant was first arraigned in court.

It is allowed.

DELIVERED, DATED and SIGNED at MOMBASA on this 13<sup>th</sup> day of NOVEMBER 2025.

Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI



JUDGE

In the presence of; -

APPLICANT

RESPONDENT: **MR NGIRI**

COURT ASSISTANT: **MS BEBORA**

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2025-11-13 11:49:24

