

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION NO. E141 OF
2025

GLADYS ADHIAMBO
OMONDI.....APPLICANT

VERSUS

REPUBLIC.....
....RESPONDENT

RULING

1. The Applicant herein, vide the notice of motion dated 7th August, 2025 seeks an order for the review of her sentence in two cases; Kisumu CM's Criminal Case No. 134 of 2023 Republic v Gladys Adhiambo Omondi and Kisumu CM's Criminal Case No. 135 of 2023 Republic v Gladys Adhiambo Omondi, so that the period that she spent in custody in the two matters awaiting conclusion of her trials is taken into account, in line with *Section 333(2) of the Criminal Procedure Code, Cap 75 Laws of Kenya*, which provides that:

333(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.

2. The ideal manner in which the Applicant should have moved the court is by filing two different miscellaneous applications for review of her sentences as she was sentenced in two different cases.
3. I however take cognizance of the fact that the Applicant is acting in person and I will in the premises proceed to determine her application as is.
4. I have gone through the record of the lower court in *Kisumu CM's Criminal Case No. 134 of 2023 Republic v Gladys Adhiambo Omondi* and note that the Applicant took plea on 2nd March, 2023 and was remanded in custody. She remained in custody until 13th March, 2023 when she was released on bond.
5. Her bond was later cancelled on 11th August, 2023 and she remained in custody until her case was concluded. She was ultimately convicted and thereafter sentenced to serve imprisonment for one and a half years on 3rd October, 2024. Cumulatively, the period that she was remanded in custody was 430 days.
6. It is clear from the record of the trial court, which is before me, that the period of 430 days that the Applicant remained in custody while her trial proceeded was not taken into account

by the trial court, as provided for under *Section 333(2)* of the *Criminal Procedure Code*.

7. The Court of Appeal in **Ahamad Abolfathi Mohammed & another v Republic [2018] eKLR** held that: -

““Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody...”

8. The *Judiciary Sentencing Policy Guidelines* provides 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.”

9. From the authority and the text above, the trial court should have proportionately reduced the 430 days that the Applicant

was in remand custody from the sentence of one and a half years imprisonment.

10. With respect to Kisumu CM's Criminal Case No. 135 of 2023 Republic v Gladys Adhiambo Omondi, the trial court bears it that the Applicant took plea on 2nd March, 2023 and was remanded in custody. She remained in custody until 26th July, 2023 when she was released on bond.
11. The Applicant's bond was later cancelled on 11th August, 2023 and she was remanded in custody until her case was concluded. She was ultimately convicted and thereafter sentenced to serve imprisonment for one and a half years on 26th September, 2024. Cumulatively, the period that she was remanded in custody was 557 days.
12. Again, that the period of 557 days that the Applicant remained in custody while her trial proceeded was not taken into account by the trial court, as provided for under *Section 333(2)* of the *Criminal Procedure Code*.
13. The trial court should have proportionately reduced the 557 days that the Applicant was in remand custody from the sentence of one and a half years imprisonment.

14. The foregoing being the position, I reach the result that the Applicant's application is merited. I allow it in the following terms:

a. **The Applicant's sentence in Kisumu CM's Criminal Case No. 134 of 2023 Republic v Gladys Adhiambo Omondi is hereby reviewed only to the extent that the period of the sentence of one and a half years imprisonment shall be reduced by 430 days.**

b. **The Applicant's sentence in Kisumu CM's Criminal Case No. 135 of 2023 Republic v Gladys Adhiambo Omondi is hereby reviewed only to the extent that the period of the sentence of one and a half years imprisonment shall be reduced by 557 days.**

15. This file is hereby closed.

DELIVERED (virtually) DATED and SIGNED this 4th November, 2025.

JOE M. OMIDO

JUDGE

APPLICANT: Present, virtually.

RESPONDENT: **Ms. Muema.**

COURT ASSISTANTS: **Mr. Ngoe & Mr. Juma.**