



Onyango v Republic (Miscellaneous Criminal Application E146 of 2025) [2025] KEHC 16749 (KLR) (4 November 2025) (Ruling)

Neutral citation: [2025] KEHC 16749 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E146 OF 2025**

JM OMIDO, J

NOVEMBER 4, 2025

BETWEEN

JOSEPH OPIYO ONYANGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein, vide his undated notice of motion seeks an order for the review of his sentence, so that the period that he spent in custody awaiting conclusion of his trial 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. I have gone through the record of the lower court and note that the Applicant took plea on 12th June, 2023 and was remanded in custody. He remained in custody until 19th June, 2023 when he was released on bond. His bond was later cancelled on 23rd October, 2024 and he remained in custody until his case was concluded. He was ultimately convicted and thereafter sentenced to serve imprisonment for 5 years on 23rd October, 2024. Cumulatively, the period that he was remanded in custody was 161 days.
3. It is clear from the record of the trial court, which is before me, that the period of 161 days that the Applicant remained in custody while his trial proceeded was not taken into account by the trial court, as provided for under Section 333(2) of the Criminal Procedure Code.



4. 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...”

5. 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.”

6. From the authority and the text above, the trial court should have proportionately reduced the 161 days that the Applicant was in remand custody from the sentence of 5 years imprisonment.

7. In the result, and considering the foregoing, the Applicant’s application is merited. I allow it and review the sentence only to the extent that the period of 161 days shall be deducted from the sentence of 5 years imprisonment.

8. This file is closed.

DELIVERED (VIRTUALLY) DATED AND SIGNED THIS 4TH DAY OF NOVEMBER, 2025.

JOE M. OMIDO

JUDGE

Applicant: Present, Virtually.

Respondent: Ms. Muema.

Court Assistants: Mr. Ngoe & Mr. Juma.

