



**Aakhala v Republic (Criminal Miscellaneous Application E047 of 2025)  
[2025] KEHC 17709 (KLR) (14 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17709 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL MISCELLANEOUS APPLICATION E047 OF 2025  
WM KAGENDO., J  
NOVEMBER 14, 2025**

**BETWEEN**

**JARED AAKHALA ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

1. This application by Jared Akhala, herein referred to as the Applicant, is brought pursuant to the provisions of Section 333(2) of the Criminal Procedure Code and Articles 23(1) and 165(3) of *the Constitution* of Kenya.

**The Parties**

2. The Applicant is an adult of sound mind currently serving a ten (10) year sentence at Shimo la Tewa Maximum Prison for the offence of Grievous Harm contrary to Section 234 of the Penal Code.
3. The Respondent is the Director of Public Prosecutions (DPP), an office established under Article 157(1) of *the Constitution*, mandated to institute and undertake criminal proceedings against any person before any court (other than a court martial) in respect of any offence recognized by the laws of Kenya.

**Legal Basis Of The Application**

4. Section 333(2) of the Criminal Procedure Code provides as follows:

“Subject to the 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 where otherwise provided in this Code. Provided that where a person sentenced under



subsection (1) has, prior to such sentence, been held in custody, the sentence shall take into account the period spent in custody.”

5. Article 165(3) of *the Constitution* provides that the High Court shall have—
  - a. Unlimited original jurisdiction in criminal and civil matters.
6. Article 23(1) of *the Constitution* provides that the High Court has jurisdiction, in accordance with Article 165, to hear and determine applications for redress of a denial, violation, infringement, or threat to a right or fundamental freedom in the Bill of Rights.
7. Clause 7.10 of the Kenyan 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 the overall period of detention, which may result in excessive punishment that is not proportional to the offence committed.”
8. Clause 7.11 of the said Guidelines further emphasizes that in determining the period of imprisonment that should be served by an offender, the court must take into account the period during which the offender was held in custody pending trial.

### **Reliefs Sought**

9. The Applicant prays for the following orders:
  - a. That this Honourable Court orders that his sentence be computed from the date of arrest.
  - b. That this Honourable Court grants any other order it deems fit in the circumstances.

### **Background**

10. The application arises from Criminal Case No. E020 of 2024 at Shanzu Law Courts in which the Applicant was convicted and sentenced on 6th November 2024 for the offence of Grievous Harm contrary to Section 234 of the Penal Code.
11. The Applicant contends that the trial court did not take into account the period he spent in custody prior to his conviction, contrary to Section 333(2) of the Criminal Procedure Code and the Sentencing Policy Guidelines.

### **Analysis And Determination**

12. The Applicant relies on Section 333(2) of the Criminal Procedure Code and several authorities where courts have affirmed the obligation to take into account the time an accused person spent in custody prior to sentencing.
13. In *Ahamad Abolfathi Mohamed & Another v Republic*, Criminal Appeal No. 135 of 2016, the Court of Appeal 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 and still order the sentence to run from the date of conviction.”



14. Similarly, in *Bethwel Wilson Kibor v Republic* [2009] eKLR, the Court of Appeal held that:

“By the proviso to Section 333(2) of the Criminal Procedure Code, where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account the period spent in custody. The sentencing court must expressly indicate this consideration.”
15. The High Court in *Josiah Mutunga Mutua & Another v Republ*, Machakos HCCR Appeal No. 99 of 2018 (G.V. Odunga, J.), emphasized the need for trial courts to specify when a sentence should commence, especially where an accused person has been in custody for a prolonged period before conviction.
16. This Court is clothed with both the jurisdiction and competence to grant the relief sought under Articles 23(1) and 165(3) of *the Constitution* as well as Section 364 of the Criminal Procedure Code.

### **Conclusion**

17. Having considered the application, the supporting grounds, the cited legal provisions, and the relevant authorities, this Court is satisfied that the issue raised by the Applicant falls within the ambit of Section 333(2) of the Criminal Procedure Code. The duty of the sentencing court to take into account the period an accused person spends in custody prior to conviction is now well settled in law. Each case, however, turns on its own circumstances, and the ultimate determination rests upon the record of the trial court and the nature of the sentence imposed.
18. I have called for and looked at the trial record. I note that plea was taken on 2/1/2024 and he was not granted bond. The sentence was on 6/11/2024. I note that in the sentence notes the court did not refer to the time spent in custody. I therefore allow the application and order that the applicants sentence will run from 2/01/2024. The date when we first assigned in Court.

**DATED, SIGNED AND DELIVERED AT MOMBASA THIS 14 DAY OF NOVEMBER 2025. HON. LADY JUSTICE W. K. MICHENI**

**JUDGE**

In the presence of:

In The Presence Of; The Accused Persons

For The Prosecutor Mr Sirima

Court Assistant Ms Bebora

