

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT GARISSA**  
**MISC. CRIMINAL APPLICATION NO. E045 OF 2025**

**MOHAMED ADAN.....**  
**APPLICANT**

**VERSUS**

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

**(Being a revision application against the sentence delivered by Honourable R. Aganyo on 29/8/2025 in Wajir Magistrate’s Court Criminal Case No. E139 of 2025).**

**RULING**

1. The applicant herein was charged with the offence of threatening to kill contrary to Section 223(1) of the Penal Code. Particulars were that on the 22<sup>nd</sup> of April 2025 at Wagberi Location, Wajir East Sub-County within Wajir County without lawful excuse he uttered words ‘I will kill you” while armed with a kitchen knife threatening to kill Ebla Mohamed.
2. Having pleaded not guilty to the charge, the matter proceeded to full trial and consequently he was convicted and sentenced to serve two years imprisonment. He subsequently moved to this court seeking revision of his sentence by taking into account the period spent in remand custody and that the court be lenient to him.
3. During the hearing, the respondent had no objection to the application. I have considered the application herein and oral submissions by both parties. The only issue for determination is whether the applicant is entitled to the prayers sought.
4. It is clear from the application that the applicant is not challenging conviction. He is simply seeking consideration of his entitlement under

Section 333(2) of the CPC which provides that when imposing sentence, a court must take into account the period spent in remand custody. Similar position is echoed in the Judiciary sentencing policy guidelines 2023. This position was also espoused in the case of **Bethwel Wilson Kibor vs Republic (2009) eKLR** where the court reduced the sentence imposed to take care of the period spent in remand custody by the appellant prior to his sentence.

5. It is therefore the duty of the sentencing court to take into account the period an accused person has spent in custody since the time of arrest until the sentencing date. To omit that period will be prejudicial to the applicant's constitutional right to liberty.
6. I am fully aware that sentencing is at the discretion of the trial court and an appellate court would only interfere if the same is unlawful or illegal, arrived at upon considering irrelevant factors or failure to consider relevant factors or upon considering wrong legal principles or that the same is excessive. **See Prosecutor vs Stephen Lesinko (2018) eKLR.** I have perused the court record herein. The applicant was arrested and arraigned before court on 2<sup>nd</sup> May, 2025. He denied the charge and was granted a bond of Kshs.100,000/= with surety of like amount or cash bail of Kshs.50,000/= which he did not meet. He stayed in custody till 29/8/25 when he was sentenced to 2 years imprisonment.
7. From the record, the trial court did not mention or comment about the period spent in custody from the date of his arrest to the date of sentence. The court clearly failed to consider an important factor under Section 333(2) of the CPC. The applicant stayed in custody for a period which ought to have been factored into when computing sentence.

8. For the above stated reasons, I am persuaded to find that the application is merited and therefore allowed as prayed. Accordingly, the applicant shall serve his sentence less the 4 months and 27 days spent in remand.

Dated, signed and delivered this 19<sup>th</sup> day of February, 2026.

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**J. N. ONYIEGO**  
**JUDGE**