



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY

COURT NAME: MOMBASA HIGH COURT

CASE NUMBER: HCCRMISCAPPL/E206/2023

SAIDI JUMA MAARUFU VS THE REPUBLIC

RULING

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISC APPLICATION NO. E206 OF 2023**

SAIDI JUMA MAARUFU..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

**(Revision of sentence in Mombasa Magistrate Criminal Case NO. 101 OF 2020
delivered on 4th September 2023)**

The undated Notice of Motion prepared by the Applicant is brought under Section 333 (2) of the Criminal Procedure Code. The Applicant prays that the period spent in remand custody during his trial be computed into the seven years' sentence awarded by the trial court.

The Applicant was charged, convicted and sentenced to 7 years' imprisonment for the offence of Rape contrary to Section 3 (1) (a) (b) as read with sub-section 3 of the Sexual Offences Act no. 3 of 2006.

In his affidavit in support of the application, the applicant claims to have been in remand custody from 12th August 2020 to 4th September 2023 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.

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 12th August 2020. 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 12th August 2020 when the Applicant was first arraigned in court.

DELIVERED, DATED and SIGNED at MOMBASA on this 12TH DAY OF FEBRUARY 2026.

Ruling delivered through Microsoft Teams Online Platform.

WENDY KAGENDO MICHENI
JUDGE

In the presence of;-
THE APPLICANT PRESENT IN PERSON
MR SIRIMA FOR THE STATE
BEBORA COURT ASSISTANT

SIGNED BY/FOR:
HON. LADY JUSTICE WENDY MICHENI





THE JUDICIARY OF KENYA.
MOMBASA HIGH COURT
HIGH COURT CRIMINAL
DATE: 2026-02-12 12:56:05