



**Haji v Republic (Revision Case E025 of 2025)
[2026] KEHC 2576 (KLR) (23 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2576 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
REVISION CASE E025 OF 2025
JN KAMAU, J
FEBRUARY 23, 2026**

BETWEEN

MUSTAPHA MARENJE HAJI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of robbery with violence contrary to Section 296(2) of the Penal Code. He was convicted and sentenced to death.
2. Being aggrieved by the said decision, he lodged an appeal before Kakamega High Court in HCCRA No 158B of 2014 but the same was dismissed and his sentenced of death substituted with thirty (30) years imprisonment.
3. On 15th May 2025, he filed the undated Notice of Motion application herein seeking an order that the period between 5th November 2012 and 13th November 2014 that he spent in remand during trial be taken into account while computing his sentence. He was emphatic that the said period of two (2) years and twenty-three (23) days had not been taken into account in his sentence of thirty (30) years imprisonment pursuant to Section 333(2) of the Criminal Procedure Code and the cases of Ahamad Abolfathi Mohammed & Another vs Republic[2018] KECA 743 (KLR) and Jona & 87 Others vs Kenya Prison Service & 2 Others[2021] KEHC 457 (KLR).
4. He further contended that Paragraph 2.3.18 of the revised Sentencing Policy Guidelines, 2023 provided that failure to take into account the time already served in custody impacted the overall period of detention which could result in a punishment that was not proportionate to the seriousness of the offence committed.



5. He invoked Article 50(2)(p) and Article 165 of *the Constitution* of Kenya, 2010 and argued that the least prescribed punishment for an offence in his case was that which had taken into account the period in pre-trial detention.
6. The Respondent was not opposed to his application and hence both parties did not file their respective Written Submissions. This Ruling is, therefore, based on the Applicant's application and his affidavit evidence.

Legal Analysis

7. Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) 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” (emphasis court).

8. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

Time already spent in prison by the convict...”

9. 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* (Supra).
10. A perusal of the decision rendered by Musyoka J in *Kakamega HCCRA No 158B of 2014* indicated that the Learned Judge had substituted the Applicant's death sentence with thirty (30) years imprisonment and had specifically held that the same was to run from 13th October 2014. As that was a court of equal jurisdiction to this court, this court could not seat on appeal of the said decision. The only option was for the Applicant to see redress from the Court of Appeal.

Disposition

11. For the foregoing reasons, the upshot of this court's decision was that the Applicant's undated Notice of Motion application filed on 15th May 2025 was not merited and the same be and is hereby dismissed.
12. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 23RD DAY OF FEBRUARY 2026

J. KAMAU

JUDGE

