



**Okashi & 2 others v Republic (Criminal Miscellaneous Application
E043 of 2025) [2026] KEHC 2575 (KLR) (25 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2575 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E043 OF 2025**

JN KAMAU, J

FEBRUARY 25, 2026

BETWEEN

JULIUS AMBETSA ALIAS OKASHI 1ST APPLICANT

HILLARY LITIOLO SHINAVULA ALIAS BOI BOI 2ND APPLICANT

ALEX KIBISU ALIAS KIBE 3RD APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The 1st, 2nd and 3rd Applicants herein were charged with the offence of robbery with violence contrary to Section 296 of the Penal Code. They were convicted and sentenced to twenty (20) years imprisonment.
2. On 17th July 2025, they filed Notice of Motion application dated 17th June 2025 seeking an order that the time they spent in custody during trial be taken into account while computing their sentences pursuant to Section 333(2) of the Criminal Procedure Code and Paragraph 5.1.21 of the Judiciary Sentencing Policy Guidelines that were revised in 2023.
3. They swore Affidavits in support of the said application. The 1st Applicant averred that he was arrested on 23rd August 2018, the 2nd Applicant stated that he was arrested on 19th August 2018 while the 3rd Applicant averred that he was arrested on 24th August 2018.
4. The Respondent was not opposed to their application and hence parties did not file their respective Written Submissions. This Ruling is, therefore, based on the Applicants' application and their affidavit evidence.



Legal Analysis

5. 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).

6. 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...”

7. 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.

8. Notably, a perusal of the Charge Sheet herein did not indicate the dates that the Applicants herein were arrested. Be that as it may, their matter in the lower court was first mentioned on 29th August 2018 when the Prosecution noted that the Applicants were in custody. They did not appear to have been released on bond. They were sentenced on 2nd October 2024. A reading of the Trial Court’s decision showed that it did not take into account the period they had spent in remand during trial. This was a period that ought to have been taken into consideration while computing their sentence.

Disposition

9. Accordingly, the upshot of this court’s decision was that the Applicants’ Notice of Motion application dated 17th June 2025 and filed on 17th July 2025 was merited and the same be and is hereby allowed.

10. For the avoidance of doubt, the period between 29th August 2018 and 1st October 2024 be and are hereby taken into account while computing their sentences in line with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

11. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 25TH DAY OF FEBRUARY 2026

J. KAMAU

JUDGE

