



Okwemba v Republic (Criminal Miscellaneous Application E035 of 2025) [2026] KEHC 2355 (KLR) (24 February 2026) (Ruling)

Neutral citation: [2026] KEHC 2355 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E035 OF 2025**

JN KAMAU, J

FEBRUARY 24, 2026

BETWEEN

ABSOLOM OKWEMBA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code. He was convicted and sentenced to death.
2. Being aggrieved by the said decision, he petitioned this court for re-sentencing through HCCR Miscellaneous Application No E002B of 2023 whereby the court substituted his death sentence with a sentence of thirty (30) years imprisonment.
3. On 17th June 2025, he filed Notice of Motion application dated 28th May 2025 seeking an order that this court reduces his sentence to a shorter sentence pursuant to Section 333(2) of the Criminal Procedure Code, Section 26(2) of the Penal Code and Paragraph 5.1.21 of the Judiciary Sentencing Policy Guidelines that were revised in 2023.
4. He averred that he was further requesting this court to reduce his current sentence to a least prescribed one based on his rehabilitation in custody for the last thirteen (13) years.
5. 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

6. In its decision of 27th June 2024, this very court reduced the Applicant’s death sentence to thirty (30) years imprisonment. The court did not have the lower court file at the time that it delivered the said



decision. It, therefore, directed that he was at liberty to file an application under Section 333(2) of the Criminal Procedure Code when the lower court record was availed.

7. Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya), the said Section 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* [2018] eKLR.
10. Notably, the Charge Sheet was missing in the record herein. However, the proceedings that the Applicant provided indicated that he was first arraigned in court on 29th June 2011. He did not appear to have been released on bond throughout his trial. He was convicted and sentenced on 21st February 2017.
11. As he was now serving a determinate sentence which was reduced from the death sentence, the time that he spent in custody was, therefore, a period that ought to be taken into account while computing his sentence. To avoid hardship on the part of the Applicant herein, this court deemed it prudent to dispense with his application based on the date he was arraigned in court and not from the date of his arrest as the Charge Sheet could not be traced.

Disposition

12. Accordingly, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated 28th May 2025 and filed on 17th June 2025 was merited and the same be and is hereby allowed.
13. For the avoidance of doubt, the period between 29th June 2011 and 20th February 2017 be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
14. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 24TH DAY OF FEBRUARY 2026

J. KAMAU
JUDGE

