Musyoka v Republic (Criminal Revision E172 of 2025)
[2026] KEHC 3426 (KLR) (12 March 2026) (Ruling)

Neutral citation: [2026] KEHC 3426 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT GARISSA

CRIMINAL REVISION E172 OF 2025

JN ONYIEGO, J

MARCH 12, 2026

BETWEEN

ALEXANDER VUNDI MUSYOKA ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

(Being a revision application from the sentence of hon. C. Maundu (CM) delivered On 20-1-2022 in Garissa criminal case no. 843 of 2018)

RULING

1. The application for determination before me is dated 26.05.2025 in which the applicant seeks to have his sentence reviewed pursuant to Section 333(2) of the Criminal Procedure Code.

2. The applicant was convicted by Garissa CM's Court in Criminal Case No. 842 of 2018 with the offence of robbery with violence contrary to section 296(2) of the Penal Code. The particulars of the offence being that on 10.11.2018 at Garissa Rafiki Hardware in Garissa Township within Garissa County, jointly with others not before the court, while armed with offensive weapon namely a metal rod, he robbed one namely Abdi Ibrahim Ilkole cash money Kes. 430, three rolls of barbed wire, a hacksaw, 50 feet tape measure, a pair of scissors, pliers and a Nokia sell phone model 105 serial number 359729064652853 all valued at Kes. 17,230/- and at the time of such robbery with violence struck and killed the said Abdi Ibrahim Ilkole.

3. He was convicted and sentenced to death. Dissatisfied with both the conviction and sentence, he moved to this court vide criminal appeal No. E009/2023 consequences whereof the death sentence was set aside and instead substituted with 25 years' imprisonment.

4. The applicant argues that he is not opposed to the sentence meted upon him but wishes to have the period he spent in custody being 3 years and 50 days factored in his sentence pursuant to Section 333(2) of the Criminal Procedure Code.

5. The respondent opposed the application urging that this court is functus officio and further, that this court has before determined the applicant's appeal thereby substituting his death sentence with 25 years' imprisonment.

6. The only issue for determination is; whether the applicant is entitled to the prayer sought. It is trite that, when imposing a sentence in a criminal trial, the trial court ought to take into account the period spent in remand custody in the course of the trial.

7. Section 333(2) of the Criminal Procedure Code provides:-

> " 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".

8. It is clear from the above proviso that the law requires the trial court to take into account the period the convict spent in custody during the trial. [See the Court of Appeal's holding in the case of Ahamad Abolfathi Mohammed & Another vs Republic [2018]eKLR].

9. Similarly, The Judiciary Sentencing Policy Guidelines does echo Section 333(2) of the CPC by providing as follows:

> " 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."

10. In my view, given the circumstances of the case herein and considering the fact that this court had previously substituted the applicant's sentence from death to a 25-year jail term, it is my considered view that he is not deserving of the prayers sought herein. The court could not have exercised that discretion where it pronounced a death penalty. The fact that the high court reduced the sentence to that of imprisonment does not mean that the death penalty was unlawful.

11. The applicant should be happy and satisfied that he is already a beneficiary of a reduced sentence. He had challenged the sentence in general in his appeal. The court having reduced the sentence, it has no power to further revisit the same. I do concur with the respondent that this court is functus officio. Accordingly, the application is dismissed for want of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 12TH DAY OF MARCH 2026.

.....••

J. N. ONYIEGO

JUDGE