

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MALINDI**

**MISCELLANEOUS CRIMINAL APPLICATION NO. E020 OF 2026**

**AMIN ABBAS KHAMIS .....APPLICANT  
VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant filed an undated application seeking that the period spent in remand custody be considered as part of his sentence. The Applicant was convicted of the offence of attempted murder contrary to Section 220(a) of the Penal Code in Malindi Criminal Case No. E127 of 2025. He was sentenced to 10 years imprisonment.

2. The Respondent opted not to file any response to the Application.

3. Section 333(2) of the Criminal Procedure Code provides as follows:

*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.*

4. The proviso to Section 333(2) of the Criminal Procedure Code requires the court while sentencing, to take into account the period an accused person has spent in custody pending trial.

5. In the case of **Bethwel Wilson Kibor v Republic [2009] eKLR**, the Court of Appeal had this to say about the said proviso:

*The incident took place way back in 1999. The appellant was promptly arrested and taken to court. There were long adjournments due to transfers and/or changes of trial Judges resulting in long incarcerations of the appellant. By proviso to section 333(2) of Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody.*

*The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.*

6. Flowing from the above authority, it is clear that a trial court must take into account the period spent in custody pending trial, and state so, when imposing sentence.
7. The record shows that the Applicant was arrested on 4.2.25. He was convicted on 6.2.26 and sentenced on 19.2.26. From the record, there is no mention by the trial court that the period that the Applicant had spent in custody pending trial, was taken into account when sentencing him. This is a serious omission on the part of the trial court, as it amounts to non-compliance with an express statutory provision.
8. I accordingly find that the Application herein is merited and the same is allowed on terms that the 10 year sentence imposed upon the Applicant shall run from 4.2.25, the date of his arrest.

**DATED and DELIVERED in MALINDI this 30<sup>th</sup> day of April 2026**

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**M. THANDE**  
**JUDGE**