

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL REV. NO. E046 OF 2025

SOLOMON MBALUKA..... APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

(Being a Revision from the original conviction and sentence by Hon. Israel Ruhu, Senior Resident Magistrate, in Mpeketoni Principal Magistrate's Court Cr. Case No. E111 of 2024 delivered on 30/09/2024)

RULING

1. The Applicant has filed an undated application seeking for time of 7 months spent in custody while awaiting trial to be considered.
2. The Application is supported by the affidavit of the Applicant in which he states that he was on the 6/10/2025 sentenced to serve one year imprisonment for the offence of occasioning a person grievous harm. That the period of 7 months spent in custody was not considered when he was sentenced.
3. The court called for the lower court's file. I have perused the said file and noted that the Applicant was arrested on 17/5/2024 and was arraigned in court on the 21/5/2024. He was sentenced on 6/10/2025. He was in prison custody throughout the trial, he was thereby in prison custody

awaiting trial for a period of close to 5 months before he was sentenced.

4. Section 333(2) of the Criminal Procedure Code requires a court when sentencing an accused who has been in custody awaiting trial to take into account the period spent in custody while awaiting trial. The trial court while sentencing the appellant did not indicate whether it had taken into account the period spent in custody. That being so I find that the court was in error not to comply with the mandatory requirement of Section 333(2) of the Criminal Procedure Code.
5. In view of the foregoing, I find the application to be merited. I accordingly order that the sentence of one year meted on the Applicant do commence from the date of his arrest, i.e 17th May 2024. Consequently, the Applicant has by now completed the sentence of one year. I thereby order that he be released from custody forthwith.

Delivered, dated and signed at GARSEN this 8th day of May 2026.

J. N. NJAGI
JUDGE

In the presence of:

Mr. Oluoch for Respondent

Applicant: Present virtually at G.K. Prison Hindi

Court Assistant: Nasra

Original