



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ISIOLO**  
**CRIMINAL APPEAL NO. E010 OF 2024**

**ELIUD THURANIRA**

.....**APPLICANT**

**VERSUS**

**REPUBLIC** .....

**..RESPONDENT**

**JUDGMENT**

1. The Appellant herein was charged with the offence of robbery with violence, and sentenced to serve a prison term of 10 years. He was aggrieved by both the conviction and sentence, and filed the present Appeal.
2. However, upon filing his Submissions, he did file alongside it an Amended ground of Appeal in which he made only one plea, namely:  
*“ That the Learned trial Magistrate erred in law and fact by not observing the mandatory provisions of **Article 50 (2) (p) of the Constitution and Section 333(2) of the Criminal Procedure Code. (CPC)**”*
3. He submits that he was first arraigned in Court on 03/04/2029 and in accordance with the provisions of **Section 333 (2) of the Criminal Procedure Code** and **Judiciary Sentencing Policy Guidelines**, his sentence ought to have taken effect from the said

date. He further relied on the Court of Appeal decision in the case of **Ahmed Abolfathi Mohammed & Another vs Republic [2018] eKLR** to buttress his Submissions.

4. I have considered the Appellant's plea and his submissions. Section 333 (2) of the CPC provides as follows: - *" Subject to the provisions of Section 38 of the Penal Code, 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody."*

5. While interpreting the above cited section of CPC the Court of Appeal in **Ahmed Abolfathi's case (supra)** held as follows:- *By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. "Taking into account" the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the*

*conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(s) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.”*

6. The Lower Court record shows that the Appellant was arrested on 02/05/2019 and he remained in custody throughout the trial. He was convicted and sentenced on 07/09/2022. That was 3 years and 4 months spent in custody. The record shows that this period was not taken into consideration. In terms of Section 333 (2) of CPC and as aptly explained by the court of Appeal in Ahmed Adolfathi's case as aforesaid, this period ought to have been discounted from the sentence of 10 years
7. The Appeal is therefore merited, and it is hereby allowed. consequently, the 10 years sentence is hereby deemed to have taken effect from 02/05/2019.

Dated, Signed and delivered at Isiolo, this 7<sup>th</sup> day of May, 2026.

S. Chirchir  
Judge

In the presence of:-  
Roba/Kalelo-Court Assistant.  
Mr. Majale for the Respondent

The Applicant

ORIGINAL