



**Kariuki v Republic (Miscellaneous Application E044 of 2024)
[2025] KEHC 678 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 678 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS APPLICATION E044 OF 2024
SC CHIRCHIR, J
JANUARY 30, 2025**

BETWEEN

HARRISON MUNYIRI KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By way of Notice of Motion dated 15th March 2024, the applicant seeks the following orders;
 - a. That , the honourable court be pleased to hear and determine this application in his favour
 - b. That this honourable court be pleased to consider the period of time he spent while in remand.
2. The Application is anchored on the grounds set out therein and supported by the Affidavit of the Applicant. He states that on 5/2/2024, he was convicted and sentenced to two- years imprisonment for the offence of obtaining money by false pretences . That he has been in custody from 23/1/2023. He prays that this period be taken into account.

Determination

3. A perusal at the trial court record indicate that the applicant was initially given a bond of sh. 50,000. He later absconded and a warrant of arrest was issued. He was arrested on 23/1/2023 and remained in custody until he was sentenced. It is therefore true that he had spent about one year and 12 days in custody. It is this period that the Applicant wishes the court to consider
4. The issue to be determined therefore is whether the applicant is entitled to review of sentence under Section 333(2) of the Criminal Procedure Code. The section 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. The statement “ take into account” was clarified by the court of Appeal in *Abamad Abolfathi Mobammed & Another vs Republic* [2018]eKLR where the court stated as follows: “The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the *Criminal Procedure Code*. 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(2) 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. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”
6. Back to the present case, the trial Magistrate stated as follows: “ I have considered the nature of the offence, I have considered the Accused’s mitigation, the fact that it is stated that he is a first offender and the amount of time he has been in custody.....” Then as she concludes stated : “ the Accused is sentenced to two years imprisonment”
7. Going by the Court of Appeal explanation, the trial court ought to have discounted one year, 12 days . She did not discount this period and therefore failed to comply with section 333(2) of the criminal procedure code. The Applicant’s Application is therefore merited.
8. When the aforesaid period is taken into account, then the Applicant is due to complete his sentence on January 2025. I consider the period served to be adequate . He is to be released forthwith, unless otherwise lawfully held.

DATED, SIGNED AND DELIVERED AT KAKAMEGA THIS 30TH DAY OF JANUARY 2025.

S. CHIRCHIR

JUDGE

In the presence of:

Godwin Luyundi – Court Assistant

Ms Kagai for the Respondent

The Applicant in person.

