



REPUBLIC OF KENYA



**Kinyozi alias Shirinji v Republic (Miscellaneous Criminal Application
E075 of 2024) [2025] KEHC 649 (KLR) (29 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 649 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E075 OF 2024**

**JN KAMAU, J
JANUARY 29, 2025**

BETWEEN

NICHOLAAS AYODI KINYOZI ALIAS SHIRINJI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of rape contrary to Section 3(1)(a) and (b) as read with Section 3(3) of the *Sexual Offences Act* No 3 of 2006. He had also been charged with an alternative charge of committing an indecent act with an adult contrary to Section 11(A) of the *Sexual Offences Act*.
2. The Learned Trial Magistrate, Hon M. Ochieng, Principal Magistrate convicted him on the main charge and sentenced him to ten (10) years imprisonment.
3. On 12th July 2024, he filed a Notice of Motion application that was dated 10th July 2024 seeking to have the period of one (1) year nine (9) months that he stayed in custody while the trial was ongoing be taken into account as part of the sentence that he had already served pursuant to Section 333(2) of the *Criminal Procedure Code*.
4. He asserted that the omission by the Trial Court to consider this period was contrary to Articles 23(1) 25(c) 50 (20(p) (sic). He thus urged this court to grant him the orders he had sought.
5. He did not file Written Submissions to support his prayer. The Respondent was not opposed to the said application and did not therefore file any Written Submissions.



Legal Analysis

6. As could be seen hereinabove, the Applicant's application was based on Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya). The said Section provides that:

“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” (Emphasis Court).
7. This duty was also contained in the Judiciary Sentencing Policy Guidelines where it is provided that: -

“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.”
8. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in the case of Abamad Abolfathi Mohammed and Another vs Republic [2018] eKLR.
9. The Applicant herein was arrested on 11th February 2021. He was sentenced on 26th October 2022. Although he was granted bond/bail, he did not appear to have come out on bond/bail while his trial was going on. He thus spent one (1) year eight (8) months and thirteen (13) days in custody before he was sentenced.
10. A reading of the Trial Court's sentence showed that it took into consideration one (1) year and seven (7) months that he spent in remand before sentencing leaving a balance of one (1) month and thirteen (13) days. This court was therefore convinced that this was a suitable case for it to exercise its discretion and grant the orders sought.

Disposition

11. For the foregoing reasons, the upshot of this court's decision was that the Applicant's Notice of Motion application that was dated 10th July 2024 and filed on 25th January 2024 was partially merited and the same be and is hereby allowed.
12. It is hereby directed that in addition to the one (1) year and seven (7) months that the Trial Court took into account while sentencing him, the period of one (1) month and thirteen (13) days be taken into account while computing his sentence as provided in Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
13. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 29TH DAY OF JANUARY 2025

J. KAMAU



JUDGE

