



**Abdullahi v Republic (Miscellaneous Criminal Application
E011 of 2025) [2025] KEHC 5113 (KLR) (30 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5113 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E011 OF 2025**

JN ONYIEGO, J

APRIL 30, 2025

BETWEEN

ABDIRAHMAN ADOW ABDULLAHI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of Hon. C.Maundu(CM)
delivered on 17-04-2025 in Garissa Sexual offence case No. 1 of 2018)*

RULING

1. The applicant herein was charged with the offence of rape contrary to Section 3(1)(a)(b) of the [Sexual Offences Act](#) No.3 of 2006. Particulars are that on 29th Dec. 2017 at around 1600 hrs in Janajara Location within Garissa county, he intentionally and unlawfully had carnal knowledge of JID without her consent.
2. Having pleaded not guilty, the matter proceeded to full trial consequences whereof, he was convicted and sentenced to 10years imprisonment. Aggrieved by the said sentence, he appealed to the high court vide criminal appeal number 19 of 2019. On 16-09-2021, the court dismissed the appeal. Subsequently, he moved to this court vide a notice of motion dated 24-02-2025 seeking revision of his sentence under section 333(2) of the [CPC](#). Basically, he is seeking the court to take into account, the period spent in remand custody before his sentence. In response, the state did not oppose the same thus urged the court to consider the same.
3. I have considered the application herein which is not opposed. The application is seeking this court's intervention by considering the period spent in remand custody. It is trite that before imposing any sentence, a trial court must take into account the period spent in remand custody. This position is clearly captured under section 333(2) of the [CPC](#).



4. The proviso to section 333(2) of the CPC requires the court to take into account the time spent in custody in sentencing. 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.”
5. Court’s obligation under Section 333(2) of the CPC has been explained in the Judiciary Sentencing Policy Guidelines (under clauses 7.10 and 7.11) thus:

“The provision 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.”
6. Superior courts have time and again emphasized that courts must give full effect to section 333(2) of the Criminal Procedure Code. See the Court of Appeal in Abamad Abolfathi Mohammed & Another v Republic [2018] eKLR. (see also Bethwel Wilson Kibor v Republic [2009] eKLR).
7. A perusal of the trial court’s record clearly show that the court did not take into account the period spent in remand custody. The appellant was arraigned before the trial court on 02-01-2018. He remained in custody till 17-04-2019 when he was sentenced. This period translates to 15 months and 15 days. Consequently, this period ought to have been considered. Accordingly, it is my finding that the application is merited and therefore allowed with orders that the period spent in remand custody shall be taken into account when computing sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH APRIL, 2025

J. N. ONYIEGO

JUDGE

