



**Abdi v Republic (Miscellaneous Criminal Application
E046 of 2024) [2025] KEHC 8946 (KLR) (25 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8946 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E046 OF 2024**

**JN ONYIEGO, J
JUNE 25, 2025**

BETWEEN

DUALE MOHAMED ABDI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence delivered by Honourable J.
Omwange on 16-06-2023 in Garissa law court Criminal Case No. E135 of 2023)*

RULING

1. The applicant herein was charged together with another for the offence of stealing a motor cycle contrary to section 278(A) of the penal code. Particulars were that on the 13th day of March 2023 at Bulla Medina area, Garissa Township in Garissa Sub-County within Garissa County they jointly stole one motor cycle registration number KMFY 597T Chasis number MD625AF 70M1FO3320 make TVS 150cc red in colour worth Kshs 256,000/= the property of one Abdisalan Mohamed Hussein.
2. He also faced an alternative count of handling stolen property contrary to section 322(1)(2) of the penal code. Particulars were that on 14th day of March 2023 at Ziwani area, Garissa Township in Garissa Sub-County within Garissa County, jointly, otherwise than in the course of stealing dishonestly retained one motor cycle registration number KMFY 597T Chasis number MD625AF 70M1FO3320 make TVS 150cc red in colour knowing or having reasons to believe it to be stolen item.
3. Having pleaded guilty to the charge, he was convicted on his own plea of guilty on 16-06-23 and consequently sentenced to serve three years imprisonment. He subsequently moved to this court seeking revision of his sentence by taking into account the period spent in remand custody and that the court be lenient to him.



4. During the hearing, the respondent had no objection to the application. I have considered the application herein. The same is not opposed.
5. It is clear from the application that the applicant is not challenging conviction. He is simply seeking consideration of his entitlement under Section 333(2) of the CPC which provides that when imposing sentence, a court must take into account the period spent in remand custody. Similar position is echoed in the Judiciary sentencing policy guidelines 2023. This position was also espoused in the case of Bethwel Wilson Kibor vs Republic (2009) eKLR where the court reduced the sentence imposed to take care of the period spent in remand custody by the appellant prior to his sentence.
6. It is therefore the duty of the sentencing court to take into account the period an accused person has spent in custody since the time of arrest until the sentencing date. To omit that period will be prejudicial to the accused's or appellant's constitutional right to liberty.
7. I am fully aware that sentencing is at the discretion of the trial court and an appellate court would only interfere if the same is unlawful or illegal, arrived at upon considering irrelevant factors or failure to consider relevant factors or upon considering wrong legal principles or that the same is excessive. See Prosecutor vs Stephen Lesinko (2018) eKLR. I have perused the court record herein. The applicant was arrested on 14-03-2023 arraigned before court the following day. He denied the charge but changed plea and pleaded guilty on 16-06-2023 when he was convicted and sentenced.
8. From the record, the trial court did not mention or comment about the period spent in custody from the date of his arrest to the date of sentence. The court clearly failed to consider an important factor under Section 333(2) of the CPC. The applicant stayed in custody for a period of two months and 28 days which ought to have been factored into when computing sentence.
9. For the above stated reasons, I am persuaded to find that the application is merited and therefore allowed as prayed. Accordingly, the committal warrant shall be amended to reflect the period spent in custody. The applicant shall serve his sentence less the two months and 28 days.

DATED, SIGNED AND DELIVERED THIS 25TH DAY OF JUNE 2025

J. N. ONYIEGO

JUDGE

