



**Kimitei v Republic (Miscellaneous Criminal Application
204 of 2021) [2023] KEHC 21322 (KLR) (10 August 2023) (Ruling)**

Neutral citation: [2023] KEHC 21322 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION 204 OF 2021
RN NYAKUNDI, J
AUGUST 10, 2023**

BETWEEN

SIMON KIBET KIMITEI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Coram: Before Hon. Justice R. Nyakundi

Mr. Mugun for the State

1. The applicant approached this court vide a notice of motion filed on September 6, 2021 seeking to have the time he spent in remand custody considered as stipulated under section 333(2) of the [Criminal Procedure Code](#).
2. The applicant was charged and convicted of the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). he was sentenced to serve 20 years' imprisonment on November 22, 2018. He elected to withdraw his appeal and file the present petition for sentence review.
3. The application is expressed to be brought under section 333(1) of the [Criminal Procedure Code](#). The applicant urged that he was arrested on November 30, 2011 and arraigned in court for sentencing on November 23, 2018. He submitted that he was remorseful and repentant and further, that he was a first offender with a family depending on him. He urged the court to consider allowing the application and giving him a non-custodial sentence.



Section 333(2) of the *Criminal Procedure Code* provides as follows:-

“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 into account of the period spent in custody.”

4. Upon consideration of the application, it is my considered view that the application succeeds to the extent that the sentence of the applicant shall be considered to run from November 30, 2011.

It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 10TH DAY OF AUGUST 2023.

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R. NYAKUNDI

JUDGE

