



**CA v DPP (Criminal Miscellaneous Application E061 of 2023)
[2025] KEHC 164 (KLR) (20 January 2025) (Ruling)**

Neutral citation: [2025] KEHC 164 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E061 OF 2023**

**S MBUNGI, J
JANUARY 20, 2025**

BETWEEN

CA APPLICANT

AND

DPP RESPONDENT

RULING

1. The application dated 8th December, 2023 filed by the applicant seeks for sentence review in accordance to the provisions of section 333(2) of the Criminal Procedure Code to take into account the period spent in custody during trial.
2. The applicant was charged with the offence of incest contrary to section 20(1) of the sexual offences act No. 3 of 2006 and was sentenced to serve ten (10) years imprisonment by the trial court.
3. According to The Judiciary Sentencing Policy Guidelines 2023:

“Section 333 (2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.

Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of



bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.”

4. Section 333(2) of the *Criminal Procedure Code* 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. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.

6. I have perused the trial court proceedings and judgment in Kakamega Criminal Case No. SO 22 of 2019 by Hon. Nyakundi (SPM). In the court’s pronouncement, there is clearly no evidence that section 333(2) of the CPC was complied with.

7. According to the charge sheet, the applicant was arrested on 17.03.2019. He was first arraigned in court on 18.03.2019. It was not until 08.03.2022 that the trial court set out the terms of bond. The applicant however remained in remand throughout the trial until the date of sentencing by the trial court.

Disposition.

8. The court finds that the application has merit. The same is allowed.

9. The sentence of 10 years’ imprisonment to commence from the date of arrest being 17.03.2019 pursuant to section 333(2) of the CPC.

10. Right of appeal 14 days explained.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 20TH DAY OF JANUARY, 2025.

S.N MBUNGI

JUDGE

In the presence of :

Accused person – present

Court Prosecutor – Ms. Osoro

Court Assistant – Elizabeth Angong’a

