



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kihungwa v Republic (Criminal Petition E037 of 2023)  
[2025] KEHC 1504 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1504 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL PETITION E037 OF 2023  
E OMINDE, J  
FEBRUARY 13, 2025**

**BETWEEN**

**ANDREW MUSAINA KIHUNGWA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant filed a Petition by way of a Notice of Motion Court stamped as received on 30<sup>th</sup> May 2023. He seeks that as provided under the provisions of Section 333(2) of the [Criminal Procedure Code](#), the court factors into his sentence the period that he spent in remand.
2. The applicant was charged with the offence of murder contrary to Section 203 as read with Section 204 of the [Penal Code](#), Chapter 63 Laws of Kenya. He was convicted and sentenced to serve 15 years' imprisonment.
3. Counsel for the State while conceding that the provisions of Section 333(2) is mandatory and the Court is obligated to apply it by factoring in the period that an accused spent in custody if at all he was in such custody during the trial, submitted that this provision is not available to the applicant herein for reasons that the relevant period was already factored in by the Hon Lady Justice Olga Sewe in sentencing the applicant.
4. It is correct that the provisions of Section 333(2) are mandatory and so must be applied as correctly stated by Counsel. Given the submission by the Prosecution, I have perused the record of proceedings of sentencing. Lady Justice Sewe in sentencing the applicant to 15 years' imprisonment was very clear.



She considered the fact that the accused was a first offender and had been in custody from the time of his arrest in 2011 and before imposing the sentence of 15 years, she stated thus

“ Accordingly taking into consideration that the accused has been in custody for 8 or so years, he is hereby sentenced to serve 15 years’ imprisonment...”

5. It is therefore correct as Counsel for the state has submitted that this period was already factored in. The upshot of the above then is that the applicant’s Application is devoid of merit and the same is dismissed.
6. Right of Appeal 14 days

**READ DATED AND SIGNED AT ELDORET ON 13<sup>TH</sup> FEBRUARY 2025**

**E. OMINDE**

**JUDGE**

