



**Kilonzo v Republic (Criminal Miscellaneous Application
E045 of 2025) [2025] KEHC 5812 (KLR) (24 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5812 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL MISCELLANEOUS APPLICATION E045 OF 2025**

**RL KORIR, J
APRIL 24, 2025**

BETWEEN

KENNETH MUTEGI KILONZO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Kenneth Mutegi Kilonzo filed the present Miscellaneous Application titled ‘petition’ seeking a review of his sentence to take into consideration the period he spent in pre-trial custody.
2. The undated Application cites a multiple Articles of *the Constitution* (2010) including Articles 23(1), 25(c), 27(1), 47, 48, 50(2), 51(1) and 165 (3).
It is also expressed to be brought under Section 333(1) and (2) of the *Criminal Procedure Code*.
3. The home-made Application seeks eight orders all of which amount to grounds for the Application which are reproduced verbatim as follows:
 - i. A declaration that failure to comply with Section 333(2) of the *Criminal Procedure Code* constitutes unfair trial in sentencing.
 - ii. A declaration the failure by the sentencing court to take into account of the period spent in custody by the Applicant contravened Section 333(2) of the *Criminal Procedure Code* and Article 50(2) (p) of *the Constitution*.
 - iii. A declaration that the applicant herein is entitled to all benefits of the law as stipulated in Article 25(c), 27(1) (2), 50(2) (p) and 51(1) of *the Constitution*.
 - iv. A declaration that the applicant herein is entitled to all benefits of the law as enshrined under Section 333(2) of the criminal Procedure Code.



- v. A declaration that failure of the sentencing court to take into account the period spent in custody by the applicant before being sentenced amounts to unfair discrimination of the law.
 - vi. An order that the period spent in custody by the applicant be taken not account and hence deducted from the imposed sentence of 20 years.
 - vii. An order that the imposed sentence of 20 years imprisonment commences from the date of arrest thus to comply with Section 333(2) of the [Criminal Procedure Code](#).
 - viii. That, no cost to this petition as the applicant is a pauper and has no money.
4. The Application first came up for directions on 17th March, 2024 when prosecution counsel indicated to the court that Applicant was seeking consideration under Section 333(2) and that the State had no objection to the Application. The court (Gitari J) directed the Deputy Registrar of the court to avail proceedings for its perusal.
 5. The Application came up for hearing on 24th March, 2025. MS Rukunga for the State submitted that she had been served the lower court proceedings and having looked at the proceedings, the State wished to concede the application. The Applicant on the other hand made no further submission.
 6. Section 333(2) of the [Criminal Procedure Code](#) provides:-

“333(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”
 7. The trial court record shows that the Applicant Kenneth Mutegi Kilonzo was arraigned in court on 5th September, 2018 where he took plea before Hon. P.N. Maina (SPM) and denied the charge. He was granted a bond of Kshs.500,000/- or cash bail of Kshs.200,000/- One Moses Muriuki Mutegi stood surety for him on 6th September, 2018 meaning that he was released from custody the day following his arraignment.
 8. The Applicant was convicted on 6th November 2020 and sentenced to serve 20 years’ imprisonment. His Counsel then promptly filed an appeal to the High Court and also filed an Application for bail pending Appeal. He stated in the Application that his client had been out on bond during trial and was not likely to abscond.
 9. The court (Gitari J) in her Judgement dated 16th December, 2021 upheld both conviction and sentence.
 10. It appears that this court was being invited to review the sentence confirmed by a court of competent and concurrent jurisdiction. Such an invitation must be declined. In the case of Moses [Otieno Dola vs. Republic, Criminal Revision no.193 of 2021](#), [2021] eKLR Lessit J dealing with a similar Application categorically stated thus:-

[16]. “The law is clear that the period a person was held in custody prior to being sentenced shall be taken into account. The sentence in this case was imposed by Lagat- Korir, J, a court of parallel jurisdiction, which was the trial court in this matter. That means that if the Applicant was aggrieved in the manner in which the period he spent in custody before sentence was considered, or not, his recourse is not before this court. His grievance should be addressed on appeal before the Court of Appeal.



[17]. He cannot return back to this same court to consider his grievance, for two reasons. First and most, it is this court which passed the impugned sentence. Having delivered itself on the matter, this court is functus officio. Secondly, the grievance he now has should be ground of appeal which can only be considered on appeal before the Court of Appeal.”

11. I am persuaded by the reasoning above that it was good judicial practice for courts to respect the decisions of courts of equal and concurrent jurisdiction unless an Applicant had exhausted the appeal process. The Applicant had a right of appeal to the Court of Appeal where his remedy lies.
12. Indeed, it was clear to this court that the Applicant was aware of the legal position and did file a petition of appeal dated 20th October, 2020 to the Court of Appeal. He is encouraged to pursue his appeal in the court of appeal.
13. With respect to the period spent in custody, I have already shown from the trial record that the Applicant was not in pre-trial custody contrary to the submission of the Respondent. Consequently, there was no period to be considered under Section 333 (2) of the [Criminal Procedure Code](#).
14. The Application has no merit and is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 24TH DAY OF APRIL, 2025.

R. LAGAT-KORIR

JUDGE

