



**Kipkemei v Republic (Miscellaneous Criminal Petition
E053 of 2024) [2025] KEHC 4373 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4373 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL PETITION E053 OF 2024**

RN NYAKUNDI, J

APRIL 4, 2025

BETWEEN

NICHOLAS KIPKEMEI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. Before me for determination is the petitioner’s application dated 25th March, 2024 in which he seeks reliefs pursuant to the provisions of section 333(2) of the *Criminal Procedure Code*. He seeks orders that his sentence should be counted from the date of his arrest.
2. In the supporting affidavit, he deposed that he was charged with the offence of murder contrary to section 203 as read with section 204 of the *Penal Code* and sentenced to 8 years’ imprisonment.
3. From the reading of the record and particularly the decision of this court on sentencing, the accused person was charged with the offence of murder but convicted of manslaughter. In the court’s wisdom, while considering the sentence to impose stated as follows:

“when considering all these, I sentence the convict to 8 years’ imprisonment bearing in mind the discount for credit under Section 333(2) of the CPC for the period spent in remand custody.”
4. The offence of manslaughter is punishable by the maximum penalty of life imprisonment under section 205 of the *Penal Code*. However, this represents the maximum sentence which is usually reserved for the worst of such cases. The Judiciary Sentencing policy guidelines are silent on the path to take in manslaughter cases hence the starting point in the determination of a custodial sentence for offences of manslaughter would be case law. In *V M K v Republic* [2015] eKLR, 10 years imprisonment



was given for manslaughter. Courts are inclined to impose life imprisonment where a deadly weapon was used in committing the offence.

5. In the case of Vincent Sila Jona & 87 Others vs Kenya Prison Service & 2 Others [2021] Eklr which I fully associate myself with. The Court held as follows;

“A declaration that Trial Courts are enjoined by Section 333(2) of the Criminal Procedure Code, in imposing sentences, other than sentence of death to take into account of the period spent in custody. A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by the High Court in order to determine their appropriate sentences. A declaration that Section 333(2) CPC applies to the original sentence as well as sentence imposed during resentencing...”

6. Additionally, in Ahamad Abolfathi Mohammed & another v Republic [2018] eKLR where the Court of Appeal held that:

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on June 19, 2012.”

7. Having considered the pleadings by the petitioner and the applicable law, I note that although this Court had indicated that it took into account the provisions of Section 333(2) of the Criminal Procedure Code when sentencing the petitioner, it did not specifically order that the sentence run from the date of arrest. In light of the decisions in Vincent Sila Jona & 87 Others vs Kenya Prison Service & 2 Others [2021] eKLR and Ahamad Abolfathi Mohammed & another v Republic [2018] eKLR cited above, it is clear that merely stating that the court has taken into account the period already spent in custody without directing the sentence to run from the date of arrest does not properly give effect to Section 333(2) of the Criminal Procedure Code. Consequently, I find merit in the petitioner's application and hereby order that the petitioner's sentence of 8 years' imprisonment shall run from the date of his arrest, that is, 21st June, 2021.

8. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF APRIL 2025.

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R. NYAKUNDI
JUDGE

