



**Kabasa v Republic (Miscellaneous Application E024 of 2024)  
[2025] KEHC 4349 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4349 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION E024 OF 2024  
RN NYAKUNDI, J  
APRIL 3, 2025**

**BETWEEN**

**JAMES ONMWONGA KABASA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for Reconstitution of the Period Spent in remand by dint of Section 333(2) of the Criminal Procedure Code Cap 75 Laws of Kenya Following the Sentence at CM's Court Eldoret)*

**RULING**

1. Before this court is a Notice of Motion dated 21.3.2024 seeking the following orders:
  - a. That the period spent in remand be computed to the current sentence
  - b. That the said period so spent during the pre-trial to start from the date of arrest which Application is based on the grounds:
    - a. That during the delivery of judgement I was nervous and could not comprehend what was going on
    - b. That upon being ferried to prison I have reconsidered and come to terms that the period spent in remand has not been accounted for being four(4) months hence this application
  - c. That Section 333(2) of *criminal procedure code*, cap 75 of the laws of Kenya allows and decrees the reconstitution and fresh computation of the period spent in remand as was held by Justice George Odunga sitting in Machakos (2021) eKLR

And which Application is based on the annexed sworn affidavit of James Onwong'a Kabasa on such other grounds to be adduced during the hearing of which I seek to be present physically



- a. That I am the applicant in this matter hence competent to swear this affidavit.
  - b. That I was charged with the offence of robbery with violence and sentenced to two (2) years imprisonment
  - c. That I am not opposing the sentence/charge
  - d. That I was not given the copy of the judgement immediately hence making it difficult to source for sufficient ground
  - e. That my intended application raises arguable facts to be pronounced by the High Court
  - f. That the extension to appeal out of time be allowed
  - g. That I swear this oath conscientiously believing the fore deponed particulars to be true to the best of my knowledge and believe
2. The record shows that the accused was charged with the offence of Robbery with Violence Contrary to Section 296(2) of the Penal Code. The particulars of the offence are that Josek Ogake Onkiege (2) James Omw'ng'a Kabasa Alias Momanyi on the 13<sup>th</sup> day of November 2022 at about 2300hrs at Rexona Langas Estate, Kapseret sub-county within Uasin Gishu County jointly with others not before court robbed Robert Ondieki his mobile phone make Neon tablet valued at Ksh 9,999/= and at the time of such robbery used actual violence to the said Robert Ondieki.
  3. On application by the defence, a plea-bargaining agreement was entered into on 26.4.2023 the Applicant was sentenced to two years imprisonment the period in pre-trial detention taken into account in terms of Section 333(2) of the CPC.
  4. The Petition before this court is basically on Section 333(2) that the four months period spent in custody be accounted for in the final sentence. However, I have read the record once again. The two years custodial sentence imposed by the trial court took judicial notice of the period the petitioner was in pre-trial remand. In fact the learned trial magistrate applied her mind to the decision making process when invoked the concept from the date he was incarcerated. Essentially, the petitioner has no remedy before this court under Section 333(2) of the CPC. The petition is therefore dismissed under Section 382 of the CPC for want of merit.

**GIVEN UNDER THE HAND AND THE SEAL OF THIS COURT THIS 3<sup>RD</sup> DAY OF APRIL 2025**

**R. NYAKUNDI**

**JUDGE**

Sidi Kirenge for the Stat

