



**Nafula v Republic (Criminal Revision E331 of 2024)  
[2025] KEHC 4365 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4365 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E331 OF 2024  
RN NYAKUNDI, J  
APRIL 4, 2025**

**BETWEEN**

**EUNICE WATILA NAFULA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. I am called to determine the petitioner’s application wherein she seeks reliefs under Section 333(2) of the *Criminal Procedure Code*. The Petitioner seeks that the sentence imposed be revised to reflect the time that she has been in pre-trial custody. She contends that she spent one year in custody before sentencing, which period was not factored in her sentence.
2. The affidavit in support of the application indicates that the Petitioner was convicted and sentenced to serve 15 years’ imprisonment for the offence of murder. That she spent 4 years in remand custody whereby 3 years was deducted during sentencing and left behind 1 year which she asks that be factored in. She prays that the provisions of section 333(2) be considered in the sentencing.
3. The cardinal grievance in this application is the session court’s non-compliance with section 333(2) of the *Criminal Procedure Code* for not taking into account the period served by the Petitioner of 1 year in pre-trial detention before she was tried, found guilty, and convicted to 15 years’ imprisonment. At the time of sentencing, the court is required to impose the sentence prescribed by the statute including the mandatory minimums but I am of the considered view that there is nothing in the same statute that prevents it from then granting credit in consonant with section 333(2) of the *Criminal Procedure Code*. That means that granting credit even where the mandatory sentences are provided for does not undermine parliament’s intent in enacting the mandatory minimum sentences. The Kenyan criminal law is made up of both the *constitution*, the statute and common law principles. The co-existence of this regime in the criminal justice system is a feature of the law of sentencing which has been even codified in the *Criminal Procedure Code* and the fundamental principles of sentencing in the judiciary framework



2022. Therefore, in sentencing framework, there must be an interaction between the penal registration, the *constitution*, the sentencing policy guidelines and the principles of common law. The application of this rule in section 333(2) of the *Criminal Procedure Code* is granted in order to mitigate some of the Constitutional imperatives which may have been violated by virtue of an offender serving pre-trial detention while presumed innocent until the contrary is proved. It is therefore not equivalent to backdating a sentence. The specific context of pre-sentence custody is to ensure adherence to Art. 50 (2) (p) on the right of an accused to be accorded a benefit of the least severe of the prescribed punishment of the offence and if convicted apply for review to a higher court against the prescribed sentence. In this case, the imposition of a custodial sentence without the application of section 333(2) of the *Criminal Procedure Code* is likely to amount to a kind of double punishment contrary to the most fundamental requirements of justice and fairness. Conscious of this fact and the provisions of the law, there is merit in the application for this court to exercise discretion to give credit of 1 year as a remission to the 15 years' custodial sentence imposed by the court. The committal warrants shall therefore be amended to comply with section 333(2) of the *Criminal Procedure Code*.

4. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY OF APRIL 2025**

.....

**R.NYAKUNDI**

**JUDGE**

Representation:

Ms. Kirenge for the state.

