



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Nyerekwa v Republic (Criminal Petition E023 of 2023)  
[2025] KEHC 4385 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4385 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL PETITION E023 OF 2023  
RN NYAKUNDI, J  
APRIL 4, 2025**

**BETWEEN**

**VINCENT NGESA NYEREKWA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The gist of the petitioner’s application is on sentence review for a non-custodial sentence and consideration of the provisions of section 333(2) of the *Criminal Procedure*
2. In so far as non-custodial sentence is concerned, this court lacks jurisdiction to review the decision of a court with concurrent jurisdiction. However, in terms of section 333(2) of the *Criminal Procedure Code*, pursuant to Art. 50 (2) (q) as read with Art. 6(a) and (b) of the *Constitution*, the facts giving rise to this application gives this court inherent jurisdiction to review the issue on sentence.
3. In the case of *Vincent Sila Jona & 87 others v 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...”



4. Additionally, in *Abamad Abolfathi Mobammed & 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.”

5. The petitioner contends that he spent 4 months in pre-trial detention which was not factored to his final sentence.

6. Having carefully considered the petition before me and the relevant legal principles, I find merit in the petitioner’s contention regarding the period spent in pre-trial detention. The evidence adduced demonstrates that the petitioner was indeed in custody for a period of four months prior to conviction, a fact that was not properly accounted for in the final sentencing. This omission contravenes the clear provisions of section 333(2) of the *Criminal Procedure Code*, which mandates that courts must take into meaningful consideration the time spent in custody before sentencing.

7. I therefore allow the application, but only to the extent of applying section 333(2) of the *Criminal Procedure Code*. The four-month period of pre-trial detention shall be counted as part of the petitioner’s sentence. Upon further consideration of the circumstances of this case, the principles of justice and proportionality, and the period already served by the petitioner, I hereby review the sentence to the period already served. The petitioner, Vincent Ngesa Nyerekwa, shall be released forthwith unless otherwise lawfully held.

8. It is so ordered.

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

.....

**R. NYAKUNDI**

**JUDGE**

