



REPUBLIC OF KENYA



**KENYA LAW**  
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**Simiyu v Republic (Petition E013 of 2024) [2025] KEHC 4346 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4346 (KLR)

***SO CASE FILE NO 149 OF 2017 (AT CM'S ELDORT) HIGH COURT CRIMINAL APPEAL NO 78 OF 2018 AT ELDORET***

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT ELDORET**

**PETITION E013 OF 2024**

**RN NYAKUNDI, J**

**APRIL 4, 2025**

**IN THE MATTER TIME SPENT UNDER REMAND CUSTODY AS PER THE PROVISIONS OF SECTION 333(2) OF THE CPC CAP 75 LAWS OF KENYA IN RELIANCE TO ARTICLE 48 OF THE CONSTITUTION OF KENYA 2010**

**AND**

**IN THE MATTER ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22(1) AND THE MATTER CONTRAVENTION OF ARTICLE 27(1) (2) (4) 28, 50(1) (2) 51(1)24(1) 165(3) AND ARTICLE 258(1) OF THE CONSTITUTION OF THE REPUBLIC OF KENYA 2010**

**BETWEEN**

**TOBIAS BENKI SIMIYU ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me for determination is a petitioner's application dated 15<sup>th</sup> January, 2024 expressed where the Applicant seeks the following orders:-
  - a. That the petitioner spent 1 year, 2months and 14days under remand custody
  - b. That the petition is seeking reduction of sentence by the time he spent in Remand under Section 333(2) of the CPC and Article 22(1) 27(1) (2) (4) of the Constitution of Kenya 2010 and which application is attached with a sworn annexed affidavit of ELD/2897/18/LS Tobias Benki Simiyu upon other grounds, reasons and arguments to be adduced thereof at hearing
    - a. That I am a Kenya citizen adult male of sound mind hence competent to swear this affidavit



- b. That I was convicted and sentenced to life imprisonment for the offence of defilement c/section 8(1) (2) of the SOA NO 3 OF 2006 at CM's court at Eldoret
  - c. That I appealed to the high court vide no 78/2018 and the life sentence was reduced to 20 years imprisonment
  - d. That I spent 1 year 2 months and 14 days in pre-trial custody
  - e. That I now pray to the honourable court to involve the provisions of section 333(2) of the CPC cap 75 and reduce my sentence by the time I spent in remand custody.
  - f. That may this honourable court be pleased to find out that my fundamental rights to equal protection, equal benefit and equal treatment as provided for under article 27(1) (2) (4) in reliance to article 22(1) of the constitution of the Republic of Kenya were violated.
  - g. That may this honourable court be pleased to waive all charges in respect of my petition
  - h. That I wish to be present during hearing of and determination of this petition
  - i. That what I have deponed there in is true and correct to the best of my knowledge, belief and understanding sources of my information
2. I have read and appreciated the litigation history of this subject matter and subsequent petition seeking review of sentence under Section 362, 364 as read with Section 333(2) of the CPC.
  3. The principal complaint in this case is that the applicant was not accorded credit period of one year and two months spent in trial remand custody.
  4. In conclusion the record shows that the Appeal's court only took cognizance of the period in which the trial court delivered the primary judgment. Given the provisions of Art 50 (6) (A) & (B) of the constitution, and the provisions of Section 333(2) failure to consider the pre-trial remand period offends fundamental rights and freedoms of the Petitioner/Application.
  5. For those reasons, I am of the view that the committal warrant to prisons be amended to encompass the provisions enacted by the legislature as stated in Section 333(2) of the CPC. For a credit period of 1year and 2 months for the benefit of the Applicant/Petition It is so ordered.

**GIVEN UNDER MY HAND AND SEAL OF THIS COURT ON THIS 4<sup>TH</sup> DAY OF APRIL 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

