



**Wabomba v Republic (Criminal Petition E049 of 2023)
[2025] KEHC 4363 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4363 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E049 OF 2023
RN NYAKUNDI, J
APRIL 4, 2025**

BETWEEN

DANIEL KIPTOO WABOMBA AKA FATA PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. I am called to determine the petitioner's application dated 27th July, 2023 in which he 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 he has been in pre-trial custody i.e. 9th October, 2017 to 15th May, 2018 which is about 2 years and 6 months.
2. In his supporting affidavit he deposed that he was charged with the offence of robbery with violence contrary to section 296(2) of the [Penal Code](#) and was convicted and sentenced to serve life imprisonment by CM's court in Eldoret case No. 481 of 2023. He stated that he was arraigned in court on 9th November, 2020 and was convicted and sentenced on 15th May, 2018. That after being sentenced, he filed an appeal in 2022 in appeal No. E091 of 2022 at Eldoret High Court and was partially successful on sentence which was reduced to 20 years' imprisonment. He urged the court to consider the pre-trial period from the 20 years' imprisonment.
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 applicant of 2 years and 6 months in pre-trial detention before he was tried, found guilty, convicted to life imprisonment which was later reviewed by the appeals court to a terminable sentence of 20 years. At the time of sentencing, the court is required to impose the sentence prescribed by the statute including the mandatory minimums but for me 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.

4. 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.
5. 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 2 years and 6 months as a remission to the 20 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.
6. It is so ordered.

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

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R. NYAKUNDI

JUDGE

