



REPUBLIC OF KENYA



**Kibiwott v Republic (Criminal Miscellaneous Application
E140 of 2024) [2025] KEHC 6312 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6312 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E140 OF 2024**

RN NYAKUNDI, J

MAY 15, 2025

BETWEEN

FESTUS KIBIWOTT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is an Application dated 9th September, 2024. The Applicant moved the Court seeking the following remedies;
 - i. That the Applicant has been in prison for a long time.
 - ii. That the Petition is seeking reduction of sentence by the time he spent in Remand under Section 333(2) of the CPC and Articles 22(1), 27(1) (2) (4) of *the Constitution* of Kenya 2010 that is 1 year 2 months.
2. The Application is attached with a sworn annexed Affidavit of the Applicant stating as follows;
 - i. That I am a Kenyan Citizen adult male sound mind hence competent to swear this Affidavit.
 - ii. That I was arrested on 9th June, 2023, charged, convicted and sentenced to 5 years imprisonment for the offence of stealing stock C/Sect 278 of the *Penal Code* by Hon. Odenyo (SPM) on 27th august, 2024.
 - iii. That I now pray to the Honorable Court to involve the Provision of Section 333(2) of the CPC CAP 75 and factor in my sentence by the time I spent in remand custody that is 1 year 2 months.



- iv. That may this Honorable 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.
 - v. That may this Honorable Court be pleased to waive all charges in respect of my Petition.
 - vi. That I wish to be present during hearing and determination of this Petition.
 - vii. That what I have deponed therein is true and correct to the best of my knowledge, belief and understanding sources of my information.
3. This Application is based under Section 333 (2) of the *Criminal Procedure Code* on the period of 1 year 2 months spent in pre-trial detention. This means the Applicant on arrest by the National Police Service and recommended to face trial was never released on bond under Article 149 (1) & (h) of *the Constitution*. This provision was articulated and interpreted in the case of *Rwabugande Moses –vs- Uganda* [2017] UGSC 8 where the Supreme Court held that a sentence arrived at without taking into consideration the period spent on remand is illegal for failure with a mandatory constitutional provision. Secondly, the Supreme Court held that there has to be an arithmetic deduction of the period the Appellant spent in lawful custody in terms of Article 23(8) of *the Constitution* when they said;

“It is our view that the taking into account of the period spent on remand by a Court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused.

We must emphasize that a sentence couched in general terms that Court has taken into account the time the accused has spent on remand is ambiguous. In such circumstances, it cannot be unequivocally ascertained that the Court accounted for the remand period in arriving at the sentence. Article 23(8) of *the Constitution* (supra) makes it mandatory and not discretionary that a sentencing Judicial Officer accounts for the remand period, as such, the remand period cannot be placed on the same scale with other factors developed under common law such as age, of the convict; fact that the convict is a first offender; remorsefulness of the convict and others which are discretionary mitigating factors which the Court can lump together. Furthermore, unlike it is with the remand period, the effect of the said other factors and the Courts determination of the sentence cannot be quantified with precision.”

4. Also in the cited case Supreme Court further reconsidered and held that;

“what is material in that decision is that the period spent in lawful custody prior to the trial and sentencing of the convict must be taken into account and according to the case of *Rwabugande* that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts but those metaphors are not derived from *the Constitution*.

Where the sentencing Court has clearly demonstrated that it has to be taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the Appellate Court only because the sentencing Judge or Justices used different words in the Judgement or missed to state that they deducted the period spent on remand.



This may be issues of style for a lower Court would not be faulted when in effect the Court has complied with the constitutional obligation in Article 23(8) of *the Constitution*.”

5. The rationale of Criminal Justice System in Kenya rests on the legitimacy of fairness, reasonableness, equality, and conformity to the Rule of Law being part of the National principles of governance and values as stipulated in Article 10 of *the Constitution*. The above mentioned principles, clearly suggest that in applying Article 27 of *the Constitution* as read with Section 333 (2) of the CPC the Applicant has a legitimate expectation that a Court should not limit certain rights entitlement legislated in his favor for him to benefit with a lesser sentence of giving credit to the period spent in pre-trial detention.
6. As consequence therefore, the committal warrant shall be amended for the time spent in custody computed as 1 year 2 months be credited as a remission for him to have an early release custody.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 15TH DAY OF MAY 2025.

.....

R.NYAKUNDI

JUDGE

