



REPUBLIC OF KENYA



**Kyalo v Office of the Public Prosecution (Criminal Miscellaneous Application  
E027 of 2024) [2025] KEHC 9384 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9384 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL MISCELLANEOUS APPLICATION E027 OF 2024**

**TM MATHEKA, J**

**MAY 12, 2025**

**BETWEEN**

**BRIAN MUTUKU KYALO ..... APPLICANT**

**AND**

**OFFICE OF THE PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

1. The applicant was charged with stock theft contrary to section 278 of the *Penal Code*. Particulars are that on the 25<sup>th</sup> day of August, 2023 at Kilome sub-location, in Mukaa subcounty within Makueni County, stole two goats valued at Kshs. 13,000 the property of Jacinta Katiwa. On Count II he was charged with stock theft contrary to Section 278 of the *Penal Code*. Particulars are that on the night of 28<sup>th</sup> August, 2023 at Kavila Village in Kilome sub-location, Mukaa subcounty within Makueni County, jointly with others not before court stole two cows valued at Kshs. 87,000 the property of Magdalena Wayua John.
2. He was arrested on 29/8/2023.
3. After a full trial, he was found guilty and convicted on both main counts vide judgment of 13/5/2024.
4. The court noted that accused had similar offence in Kilungu MCCRC E483/2022.
5. On 13<sup>th</sup> May 2024 he was sentenced to serve 2 years imprisonment on each count. The Sentences were to run concurrently.
6. It is the applicant's contention in the application before me that in sentencing by the court did not comply with section 333(2) of the *Criminal Procedure Code* which states:

“Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it



was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

1. I have checked the court record and I have found that the applicant's contention is correct.
2. In the circumstances I find that the application for review is in tandem with Section 333(2) of the CPC. I find it has merits and allow it as prayed.
3. The sentence meted to the applicant is revised as follows;

Accused is sentenced to serve two years custodial sentence in count 1 & 2 with effect from 29/8/2023."

Orders accordingly.

Order be served upon the Officer In Charge Makueni GK Prison for compliance. File closed.

**DATED, SIGNED AND DELIVERED VIA CTS ON 12<sup>TH</sup> MAY 2025.**

**MUMBUA T MATHEKA**

**JUDGE**

CA Chrispol

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA**

**THE JUDICIARY OF KENYA.**

**MAKUENI HIGH COURT**

**HIGH COURT DIV**

**DATE: 2025-05-12 17:32:31**

**The Judiciary of Kenya**

