



**Kipkemboi v Republic (Criminal Miscellaneous Application  
E061 of 2024) [2025] KEHC 8186 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8186 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL MISCELLANEOUS APPLICATION E061 OF 2024  
RN NYAKUNDI, J  
JUNE 12, 2025**

**BETWEEN**

**KELVIN KIPKEMBOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application in the case as follows:

- i. That the application be certified as urgent and thereof be dispensed with it be heard in the first instance.
- ii. That I am seeking orders for reduction of my sentence to a lesser term
- iii. That this hon court to order my sentence to commence from the day of arrest.
- iv. That this application has overwhelming chances of success.
- v. That this applicant begs to be present during the hearing and final determination of this application

It is further annexed by an Affidavit sworn by Kelvin Kipkemboi which States as follows:

- i. That I am a male adult Kenyan citizen of sound of mind versed with the fact of this matter and hence competent to swear this affidavit
- ii. That, I charged, tried, convicted and sentenced to serve 15 years imprisonment on 15<sup>th</sup> Jan 2024 by Hon S Mokuu(CM) for the offence of defilement c/sec 8(1), 8(3) of the SOA No. 3 of 2006
- iii. That, I did not appeal thus this application for sentence review under section 333(2) of the CPC and article 50(2)(p) of the constitution of Kenya.



- iv. That I pray this hon court to reduce my sentence to a less severe sentence.
- v. That I am remorseful, repentant, reformed and a law abiding citizen
- vi. That I am young man aged 23 years facing gloomy future if the sentence of 15 years stayed.
- vii. That I spent 3 years in pre-trial from 2021 to 2024 and pray to be factored in my sentence.
- viii. That this application has overwhelming chances of success
- ix. That I pray to be present at the hearing of this application thereof
- x. That what I have deponed herein is true correct to the best of my knowledge, information and belief

## Decision

- a. Society strives for justice in its operation of the criminal justice system. Justice is achieved, in part, by the imposition of proper punishment offender. In our legal system, proper punishment is defined by the sentence that, in law, the offender deserves on conviction. An offender should not be required to suffer anything less or anything more. The application is based within the scope 333(2) of the [criminal procedure code](#) which provides for the criteria for a trial court to give credit for the period an accused person suffer in pre-trial detention pending trial, conviction and sentence. The implicit premise in the foregoing, of course, is the pre-trial incarceration is effectively a form of punishment. This is a premise that is broadly accepted in Kenyan law, being the reason why sentences are reduced to account for the time spent in pre-trial detention. In fact, from a practical perceptive pre-trial detention is more punitive given the harsh conditions of many correctional facilities.
- b. The guiding principles are as outlined in the case of [Abamad Ablofathi Mohammed & 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](#), the court was obliged to take into account the period that they 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 proportionality by the period spent in custody. It is not enough for the court to merely state that it is 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.”

- c. As for this case there is clear affidavit evidence that the applicant spent 3 years in pre-trial detention which is to be deducted as credit from the 15 years' sentence imposed by the trial court. The committal warrant shall be amended for the applicant deserves sentence credit for the time he was remanded at the correctional facilities pending conclusion of his trial and final sentence
- d. It is ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12<sup>TH</sup> DAY OF JUNE 2025.**

**R. NYAKUNDI**

**JUDGE**

Representation:-

M/s Sidi for the State

