



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kipng'etich v Republic (Miscellaneous Criminal Application  
E052 of 2024) [2025] KEHC 8279 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8279 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2024  
RN NYAKUNDI, J  
JUNE 12, 2025**

**BETWEEN**

**EMMANUEL KIPNG'ETICH ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

Representation:

M/s Sidi for the State

1. Before this court is an application in the case as follows:
  - i. That the prayers sought are on sentence only
  - ii. That the petition to be allowed, admitted, heard and determined in the soonest time possible
  - iii. That the petition is seeking enforcement of section 333(2), 362, 364(1) and 365 of the *criminal procedure code* in relation to sentences that have not factored the time spent in custody in reliance on article 27(1)(2)(4), 22, 28, 25(c), 50(1)(2) of the *constitution of Kenya*
  - iv. That I am seeking reduction of my sentence by 1 year 8 months the period I spent in remand custody but was not factored in the 7 years sentence
  - v. That may this honorable court be pleased to consider the provisions of the sentencing policy guidelines of 2016 and invoke the provisions of article 165(3)(a)(b) and 258 of the *constitution of Kenya 2010* and reduce my sentence to reasonable term
1. That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit



2. That I was convicted and sentenced to serve 7 years imprisonment for the offence of robbery with violence c/sec 296/2 of the [penal code](#)
3. That my legal application herein is for sentence review under article 23(1) of the [constitution of Kenya](#) for the consideration of 1 year and 8 months I spend in pre-trial custody
4. That I am young a man who is seeking for a second chance in life since I have a young family depending on me
5. That may this honorable court exercise section 333(2) of the [CPC](#) and allow my sentence to commence as mitigated
6. That I am a first offender
7. That I swear this affidavit in good faith in support of my petition in the high court of Kenya at Eldoret
8. That I have deboned there-in is true and correct to the best of my knowledge, belief and understanding sources of my information

### **Decision**

1. It's the law in Kenya that section 333(2) of the [CPC](#) governs a wards of sentencing credit of pre-trial detention. Courts interpreting this provision must consider two questions: first, whether the phrase "in custody" significantly differs from the term "in official detention" and second, what qualifies as "official detention" and thereby merits sentence credit. The starting point for statutory interpretation must be the language of the statue itself. Proponents of the "plain meaning rule" argue that the applicability of a las should be based solely on the wording of the statute, as determined by its common-sense meaning. A related approach is "purposivism," in which courts attempt to interpret a statue based on the legislature's purpose in adopting the law. This theory rests on the assumption that the legislature passes every law with a specific purpose or objective, and that by identifying that purpose, the court successfully will apply the law. In so far as this case is concerned the applicant has certified the criteria for this court to exercise discretion under section 333(2) to grant sentence credit of 1 year and 8 months for time spent in remand custody. This call for the committal of warrant to be amended to give effect to this ruling.
2. 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**

