



Koech v Republic (Petition E124 of 2024) [2025] KEHC 8214 (KLR) (12 June 2025) (Ruling)

Neutral citation: [2025] KEHC 8214 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
PETITION E124 OF 2024
RN NYAKUNDI, J
JUNE 12, 2025**

BETWEEN

DAN KOECH APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application made in this case which states as follows: the case as follows:
 - i. That may the hon court be pleased to certify this application as urgent and be heard on priority basis
 - ii. That I was charged and convicted for the offence of robbery with violence c/sec 296(2) of the penal code in criminal case number 1406/2020 at Eldoret CM’S court and sentenced to 5 years’ imprisonment
 - iii. That the time I spent in remand custody was not computed into my sentence
 - iv. That I have no pending appeal and I am not intending to appeal
 - v. That I pray for the period spent in remand from 29/07/2020 to 24/9/2024 be computed into my sentence
 - vi. That further grounds shall be adduced in the sworn supporting affidavit of Dan Koech among other grounds to be adduce during the hearing of this application
2. It is further annexed by an affidavit sworn by Dan Koech which states as follows:
 - i. That I am a Kenyan male adult of sound of mind duly competent to swear this affidavit in a court of law



- ii. That I was charged and convicted for an offence of robbery with violence c/sec 296(2) of the penal code in criminal case number 1406/2020 at Eldoret CM’S court and sentenced to 5 years’ imprisonment
- iii. That I have no pending appeal in the high court thus this application herein.
- iv. That the time I spent in remand custody was not computed into my sentence
- v. That I pray for the period spent in remand from 29/07/2020 to 24/9/2024 be computed into my sentence of 5 years
- vi. That this hon court is seized of competent jurisdiction under article 165(3)(b) of *the constitution* of Kenya 2010 to hear and determine this matter
- vii. That the hon court be pleased to invoke the provisions of section 333(2) i.e. the period spent in remand of 4 years two months that is from 29/07/2020 to 24/9/2024 be factored in the sentence of 5 years
- viii. That I am a convict hence a pauper who cannot incur any costs for preparation of this application thus pray that such costs be waived
- ix. That I swear that all I have deboned herein above is true and correct to the best of my knowledge, information and belief

In The High Court Of Kenya At Eldoret Petition No. E123 Of 2024 Noah Anyera..... Applicant =versus= Republic.....respondent

1. Before this court is an application in the above-mentioned case which states as follows:
 - i. That may the hon court be pleased to certify this application as urgent and be heard on priority basis
 - ii. That I was charged and convicted for the offence of robbery with violence c/sec 296(2) of the penal code in criminal case number 1406/2020 at Eldoret CM’S court and sentenced to 5 years imprisonment
 - iii. That the time I spent in remand custody was not computed into my sentence
 - iv. That I have no pending appeal and I am not intending to appeal
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 - vi. That further grounds shall be adduced in the sworn supporting affidavit of Dan Koech among other grounds to be adduce during the hearing of this application
2. It is further annexed by an affidavit which states as follows:-
 - i. That I am a Kenyan male adult of sound of mind duly competent to swear this affidavit in a court of law
 - ii. That I was charged and convicted for an offence of robbery with violence c/sec 296(2) of the penal code in criminal case number 1406/2020 at Eldoret CM’S court and sentenced to 5 years imprisonment



- iii. That I have no pending appeal in the high court thus this application herein
- iv. That the time I spent in remand custody was not computed into my sentence
- v. That I pray for the period spent in remand from 29/07/2020 to 24/9/2024 be computed into my sentence of 5 years
- vi. That this hon court is seized of competent jurisdiction under article 165(3)(b) of *the constitution* of Kenya 2010 to hear and determine this matter
- vii. That the hon court be pleased to invoke the provisions of section 333(2) i.e. the period spent in remand of 4 years two months that is from 29/07/2020 to 24/9/2024 be factored in the sentence of 5 years
- viii. That I am a convict hence a pauper who cannot incur any costs for preparation of this application thus pray that such costs be waived
- ix. That I swear that all I have deboned herein above is true and correct to the best of my knowledge, information and belief

Decision

- a. The principles under section 333(2) of the CPC are now well settled as demonstrated in the following case law:

A declaration that trial courts are enjoined by section 333(2) of the *Criminal Procedure Code*, in imposing sentences, other than sentence of death to take into account of the period spent in custody. A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by the high court in order to determine their appropriate sentences. A declaration that section 333(2) CPC applies to the original sentence as well as sentence imposed during sentencing..."

Additionally, in *Ahamad 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."



- b. Sentencing is an integral part of criminal proceedings. As such, it is a matter governed by procedural law. The sentencing guidelines contemplated by section 333(2) of the CPC are inherently transformative and forward-looking. Not only are they intended to give effect to the sentences prescribed by the Legislature in a statute but also to achieve a criminal justice system that imposes punishment that is just to society, vindicative of the interests of the victims of crimes, and commensurate with the nature of the crime and the offender.
- c. On sentencing matters appellate courts are required to show defense to the trial judge's decision, absent an error in law, an error in principle to the imposition of a sentence that is demonstrably unfit in the circumstances. In the Kenyan jurisdiction there is no authority given to the trial courts for the dating back of any sentence in favor of an accused person. The sentence as by dint of the law is expected only to bear the date on which the learned trial magistrate or judge pronounces himself or herself when imposing the verdict on sentence. The only rider being the interpretation of section 333(2) of the criminal procedure code, providing for any period of incarceration which the accused has already undergone between the date of his or her arrest and the date of sentence to be taken into account as a material factor. This provision empowers trial judges and magistrates with a substantive powers to count pre-sentence custody in fixing the fair, proportionate and length of sentence to be served. There is need therefore to interpret section 333(2) of the CPC so as to avoid conflict within its internal provisions and the applicable penal statute under which the accused has been charged and punishment prescribed to avoid absurd results by searching for internal coherence and consistency in the statute.
- d. The applicants in this case were arrested in July 2020 and therefore tried, found guilty, convicted and sentence to 5 years imprisonment for the offence of robbery with violence contrary to section 295 as read with section 296 (2) of the penal code. As for the first accused the record shows that he was released on bond with effect from 28th December 2020 whereas the second accused seems not to be released on bond. The credit period spent in remand custody can be computed to be a total of 5 months whereas the second accused he spent 4 years in pre-trial detention.
- e. Today there is only one principle or approach, namely, the words of the criminal procedure code are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Code, the object of the Code, and the intention parliament. In my judgement there is merit to grant credit to the applicants for the period spent in pre-trial detention, necessitating amendments of the committal warrant that will accord each one of them his pre-sentencing detention.
- f. It is ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 12TH DAY OF JUNE 2025

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R. NYAKUNDI
JUDGE

