



**Masika v Republic (Petition E054 of 2023) [2025] KEHC 7897 (KLR) (4 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7897 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PETITION E054 OF 2023  
RN NYAKUNDI, J  
JUNE 4, 2025**

**BETWEEN**

**EVANS WANYAMA MASIKA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application made in the above-mentioned case which states as follows:
  - i. That the prayers sought are on sentence only
  - ii. That the petition 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 10 months the period I spent in remand custody but was not factored in the 4 years sentence
  - v. That I beg to be present during hearing thereof

It is further annexed with an affidavit which states as follows: -

- i. That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit
- ii. That, I was convicted and sentenced to serve 4 years imprisonment for the offence of unnatural offence c/sec 162 of the penal code
- iii. That I spent 1 year 10 months in pre-trial custody



- iv. That I am a young man who is seeking for a second chance in life since I have a young family depending on me
  - v. That may this honorable court exercise section 333(2) of the CPC and allow my sentence to commence as mitigated
  - vi. That I am a first offender
  - vii. That I beg to be present during hearing thereof
  - viii. That what I have deponed herein is true and correct to the best of my knowledge, belief and understanding sources of my information
2. The pretrial credit period is provided for under section 333(2) of the procedure code. The applicable principles are to be found in the following cases:
- a. In the case of Vincent Sila Jona & 87 others vs Kenyan Prison Service & 2 others [2021] eKLR which I fully associate myself with. The court held as follows;
 

“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 sentences as well as sentence imposed during resentencing...”
  - b. Additionally, in Ahamad Abolfathi Mohammed & another vs 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*. By dint of section 333(2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had 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 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 already spent in custody must mean considering that the period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it 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 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.”
3. *The constitution* in Article 50 (2) (e) provides that the accused person has a right to have his or her trial begin and conclude without unreasonable delay. In essence section 333(2) of the CPC is underpinned



on our constitution and factors to consider on this issue of pre-trial detention are, “the length of the delay, the reason for the delay, the prejudice to the accused and most importantly is to prevent oppressive pre-trial detention. In the case before this court the circumstances are that the applicant was in remand custody for 1 year 10 months. As a consequence of this circumstances of this case the committed warrant shall be amended to give credit of 1 year 10 months to give effect to the rights granted by section 333(2) of the CPC and article 50(2) (e) of [the constitution](#)

4. It is ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 4<sup>TH</sup> DAY OF JUNE 2025**

**R. NYAKUNDI**

