



REPUBLIC OF KENYA



**Ngugi v Republic (Criminal Revision E143 of 2024)  
[2025] KEHC 8086 (KLR) (5 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8086 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT THIKA  
CRIMINAL REVISION E143 OF 2024  
FN MUCHEMI, J  
JUNE 5, 2025**

**BETWEEN**

**FRANCIS KINYUA NGUGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Brief Facts**

1. This application for determination is undated whereas the applicant seeks to have his sentence reviewed under Section 333(2) of the *Criminal Procedure Code*.
2. The applicant was convicted by Thika Chief Magistrate, in Criminal Sexual Offence Case No. E024 of 2021 with the offence of attempted defilement contrary to Section 9(1) as read with 9(2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve ten (10) years imprisonment on 22<sup>nd</sup> June 2023.
3. The applicant seeks for review section 333(2) of the *Criminal Procedure Code* on grounds that consider the period he served in remand custody during the pendency of the trial. He states that he was convicted and sentenced on 22<sup>nd</sup> June 2023 having spent two (2) years and two (2) months in custody.

**The Applicant's Submissions.**

4. The applicant relies on Section 333(2) of the *Criminal Procedure Code* and the cases of *Abamad Aboulfathi Mohammed & Another v Republic* (2018) eKLR and *Vincent Sila Jona & 87 Others v Republic* Petition No. 15 of 2020 and submits that he was arrested on 24<sup>th</sup> April 2021 and was convicted and sentenced on 22<sup>nd</sup> June 2023 which is a period of two years and two months he spent in custody. The applicant submits that the trial court did not consider this period during sentencing and thus urges the court to review his sentence in line with Section 333(2) of the *Criminal Procedure Code*.



## The Law.

5. Section 333(2) of the [Criminal Procedure Code](#) provides:-

“Subject to the provisions of Section 38 of the [Penal Code](#), 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

6. It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.

7. The provisions of section 333(2) of the [Criminal Procedure Code](#) was the subject of the decision in [Abamad Abolfathi 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](#). 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 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 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 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 19<sup>th</sup> June 2012.”

8. The same court in [Bethwel Wilson Kibor v Republic](#) [2009]eKLR expressed itself as follows:-

“By proviso to section 333(2) of the [Criminal Procedure Code](#) where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account of the period spent in custody. Ombija J, who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22<sup>nd</sup> September 2009 he had been in custody for 10 years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”



9. According to The [Judiciary Sentencing Policy Guidelines](#):

“The proviso to section 333(2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

10. This court is empowered by Article 165(6) of the [Constitution](#) of Kenya to review a decision by a subordinate court. Article 165(6) provides:-

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

11. The applicant was arrested on 24<sup>th</sup> April 2021 and when he took plea the trial court granted him bond of Kshs. 300,000/- with one surety of similar amount. The applicant remained in custody for the duration of the trial until sentence was meted against him on 22<sup>nd</sup> June 2023, which is a period of two (2) years and two (2) months. By virtue of Section 333(2) of the [Criminal Procedure Code](#), this duration ought to have been considered during sentencing. Notably, the applicant has not contested the sentence imposed on him upon conviction. He deposes that he has not filed an appeal against conviction and sentence.

12. The applicant deposes that all he wants is for time spent in custody to be taken into account which is his legal right. I have perused the court record and noted that during sentencing, the trial court took into account the mitigation by the applicant and then sentenced the applicant to ten (10) years imprisonment in line with Section 9(2) of the [Sexual Offences Act](#). It is however evident that the trial court was silent on the issue of the duration the applicant spent in remand.

13. I find this application merited and allow it accordingly.

14. The applicant shall serve ten (10) years imprisonment to commence from 24<sup>th</sup> April 2021 being the date of arrest.

15. It is hereby so ordered.

**RULING DELIVERED VITUALLY, DATED AND SIGNED AT THIKA THIS 5<sup>TH</sup> DAY OF JUNE 2025.**

**F. MUCHEMI**

**JUDGE**

