



**Wanyonyi v Republic (Criminal Miscellaneous Application
E152 of 2024) [2025] KEHC 8172 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E152 OF 2024
RN NYAKUNDI, J
JUNE 12, 2025**

BETWEEN

JOSEPH WAMALWA WANYONYI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

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

- i. That, the applicant is seeking revision of 12 years imprisonment downwards to commence from the date of arrest
- ii. That, the prayers are on sentence review only
- iii. That any fee payable towards this application be waived as I am held in custody

It is further annexed by an affidavit sworn by the said Joseph Wamalwa Wabyonyi 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 arrested, charged, convicted and sentenced to serve 12 years for the offence of manslaughter c/sec 202 as read with 205 of the penal code
- iii. That, the respondent suffers no prejudice when the sentence to commence from the date of arrest thus contravening the provisions 46(1) & 46(2) of the prison act cap 90 on remission of sentence
- iv. That this court has constitution power bestowed upon it to entertain application of this nature as it was held in the case of Protus Buliba Shikuku v Republic



- v. That, I am solemnly approaching this hon court to fresh sentence review on sentence only
- vi. That all I have deponed herein is true and correct to the best of my knowledge, information and belie

Decision

- a. The applicant seeks review of sentence based on section 213, 216, 329. 362, 364(1)(B) and 365 of the CPC. This grievance is mainly on the pre-trial credit period under section 333(2) of the CPC. It is acknowledge on our sentence regime that the accused person is entitled to be given credit for the period spent in spent in custody while awaiting the conclusion of his/her case:

“the sentencing phase of criminal trial is considered by many judges the most challenging aspect of the case. A judge is called upon to express society’s condemnation of the offense by sanctioning the offender; to incapacitate him or her if necessary to protect the republic; to deter the offender and others from committing like offenses; and to rehabilitate the offender so that the risk of future criminal behavior is reduced. In balancing these competing interests, information about the offender and his or her personal background and circumstances (family, employment, education, mental health history, values and beliefs) is critical, but often critically lacking. Rather, a judge is typically aware of the facts of the offense (in the case of a guilty plea, only such facts as are recited during the plea colloquy) and the defendant’s prior criminal record. During sentencing, defense counsel generally provides some general information about the accused’s background as part of the dispositional argument but it is usually neither complete nor balanced. Armed with scant information, the judge must exercise discretion in meting out a sentence designed to hold the accused accountable while at the same time rehabilitating the accused. See Richard E. Redding, Evidence – Based Sentencing: The Science of Sentencing Policy and Practice

- 2. It is equally important that section 333(2) of the CPC be complied with as part of the structure sentence imposed by the court. As a consequence of the sentenced imposed by the trial court should incorporate 17th February 2016 as the commenced date. The committal of warrant shall therefore be amended accordingly.
- 3. 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

