



REPUBLIC OF KENYA



**KENYA LAW**  
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**Buyuni v Republic (Criminal Revision E312 of 2024)  
[2025] KEHC 10913 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10913 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E312 OF 2024  
RN NYAKUNDI, J  
JULY 25, 2025**

**BETWEEN**

**SHADRACK WABUKE BUYUNI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. What is pending before me for determination is an undated Notice of Motion Application in which the Applicant is seeking the following orders:
  - a. That the Honourable Court be pleased to invoke provisions of section 333(2) of the *Criminal Procedure Code* i.e. the time spent in remand be factored in the sentence to be awarded in the Criminal Case No 4956 of 2017 at Eldoret for the offence of Robbery with violence contrary to section 296(2) of the *Penal Code* where he was sentenced to 20 years' imprisonment.
  - b. That under the provisions of *the Constitution* of Kenya 2010 and Practice and Procedure Rules 2010 this Court has power to hear and determine infringements of fundamental rights and award remedies.
2. The Application is based on the grounds on the face of it among others:
  - a. That the Applicant was charged with an offence of Robbery with violence contrary to section 296(2) of the *Penal Code* where he was sentenced to 20 years' imprisonment in Criminal Case No. 4956 of 2017 at RM's Court in Eldoret.
  - b. That my appeal to the high court was dismissed at its entirety and I have no intention to make an appeal to Court.
  - c. That the period spent in remand from 21/12/2017 to 11/03/2020 amounts to a total of 2 years, 2 months and 19 days.



- d. That the Honourable court be pleased to invoke the provision of section 333(2) of the *Criminal Procedure Code* i.e. the time spent in remand be factored in the sentence to be awarded.
  - e. That the high court has competent jurisdiction to hear and determine this application under Article 163(b) of *the Constitution* of Kenya 2010.
3. The Application is supported by the annexed affidavit sworn by SHADRACK WABUKE BUYU, whose averments echo the grounds of this application.

### **Analysis and Determination**

4. On perusal of the application, the main issue for determination herein is whether the applicant is entitled to review of sentence under Section 333(2) of the *Criminal Procedure Code*.

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 provision that the law requires courts to take into account the period the convict spent in custody. The provisions of section 333(2) of the *Criminal Procedure Code* was the subject of the decision 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 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.

7. According to The Judiciary Sentencing Policy Guidelines:

“The provision 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.”



8. 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.

9. The applicant was arrested on 21<sup>st</sup> December 2017 and convicted on 24<sup>th</sup> February 2020. Notably, the Applicant has not contested the sentence, he only seeks to have the duration he spent in custody be taken into account which is his legal entitlement in my considered view.

10. I have considered the application and all the information available. It is thus crystal clear that the learned trial Magistrate did not take into consideration the provisions of section 333(2) of the *Criminal Procedure Code* while sentencing the Applicant herein. Consequently, the committal warrant to prison be amended with a commencement being the date of arrest 21<sup>st</sup> December 2017.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIA CTS AT ELDORET THIS 25<sup>TH</sup> JULY 2025**

.....

**R. NYAKUNDI**

**JUDGE**

