



**Kiplagat v Republic (Miscellaneous Criminal Application
E001 of 2025) [2025] KEHC 10197 (KLR) (15 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10197 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2025
RN NYAKUNDI, J
JULY 15, 2025**

BETWEEN

NOAH KIMELI KIPLAGAT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. What is pending for determination before this court is an undated Notice of Motion Application in which the Applicant is seeking the following orders:
 - a. That the prayers sought are on the sentence only.
 - b. That the petition be allowed, admitted, heard and determined in the soonest time possible.
 - c. That the petition is seeking enforcement of section 333(2), 362, 364(1) and 365 of the Criminal Procedure Code in relation to sentence that have not factored the time spent in custody reliance on article 27(1) (2) (4) 22,28, 25 (C) 50(1) (2) of the Constitution of Kenya.
 - d. That the Petitioner is seeking reduction of his sentence by 3 years 2 months 26 days the period he spent in remand custody but was not factored in the 10 years' sentence.
 - e. That may this honourable court be pleased to consider the provisions of the sentencing policy guideline of 2016 and invoke the provisions of article 165 (3) (a) (b) and 258 of the Constitution of Kenya 2010 and reduce any sentence to reasonable term.
2. The Application is supported by the annexed affidavit sworn by Noah Kimeli Kiplagat who avers as follows: -
 - a. That I was convicted and sentenced to serve 3 years under probation for the offence of incest C/Section 20(1) of the SOA No. 3 of 2006 by Hon Odenyo at Eldoret CM'S Court on 31st



September, 2024 before it, it was overturned by the High Court to the current sentence of 10 years imprisonment delivered on 14th October 2024 by Justice R. Nyakundi (J)

- b. That I am a young man who is seeking for a second chance in life since I have a young family depending on me.
- c. That may this honourable court exercise section 333(2) of the [CPC](#) and allow my sentence to commence as mitigated
- d. That I am a first offender
- e. That I swear this affidavit in good faith in support of my petition in the High Court of Kenya at Eldoret
- f. What I have deponed herein is true and correct to the best of my knowledge, belief and understanding sources of my information.

Decision

3. A range of standard of arrest, pre-trial issues as outlined in Article 49 of the Constitution together whether the fair trial rights in Article 50 provide a framework under which pins the criminal justice of Kenya. Pre-trial detention remains to be one of the greatest challenges in our administration justice system. In this respect Kenya is a signatory to the various international covenants and treaties and more specifically entrenches Art 2 (5) (6) of the [Constitution](#). The key instrument which focus significantly on pre-trial detention include in contest:
 - a. [International Covenant on Civil and Political Rights](#) (1966), Art 9 & 14
 - b. [Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment](#) (1988)
 - c. [UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems](#) (2012)
 - d. [UN Standard Minimum Rules for Non-Custodial Measures](#) (The Tokyo Rules) (1990)
 - e. [Revised UN Standard Minimum Rules for the Treatment of Prisoners](#) (1955) – Section C – Prisoners under arrest or awaiting trial, Rules 111-120⁸
 - f. [UN Basic Principles on the Role of Lawyers](#) (1990)
 - g. [UN Rules for the Treatment of Women Prisoners and Non-Custodial Measures for Women Offenders](#) (The Bangkok Rules) (2010), Rules 587 et sqq
 - h. [UN International Convention for the Protection of All Persons from Enforced Disappearance \(for registration/documentation\)](#) (2007)
 - i. [European Convention on Human Rights](#), Art 5 & 6
 - j. [American Convention on Human Rights](#), Art 7 & 8
 - k. [Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas African Charter of Human People's Rights](#) (Banjul Charter), Art 6 & 7
 - l. [African Commission on Human People's Rights, Guidelines for Pre-Trial Detention](#)
4. Remand prisoners may initially be held in police custody before being transferred to a penitentiary pre-trial facility. When in police custody, remand prisoners are held by the same institution that is



tasked with the investigation of their alleged offence and which may well be under pressure to ‘deliver results’. Suspects are often interrogated without the presence of a lawyer or any independent monitor, providing officials with ample opportunity to exert pressure, including through ill-treatment.

5. The UN Principles require that the accused have the assistance of legal counsel. He shall be informed of this right by the competent authority promptly upon arrest, and shall be provided with reasonable facilities for exercising this rights. If a person does not have counsel of his own choice, he shall be entitled to have counsel assigned to him by a judicial or other authority in all cases where the interests of justice so require, and without payment by him if he does not have sufficient means to pay. The ICCPR notes that failure to provide legal aid at the time of arrest violates Art 14(3) (d). under the ECHR, however, there is no requirement of assistance at the first moment of arrest. The inter-American Commission sets forth specific safeguards:

[the accused].... shall have the right to communicate privately with their counsel, without interference or censorship, without delays or unjustified time limits, from the time of their capture or arrest and necessarily before their first declaration before the competent authority.

6. In criminal cases the constitutional imperatives all the way on the chapter of the Bill of Rights, Art 48, 49 & 50 of the Kenyan Charter provides legal safeguards on the length of the period one must be placed in pre-trial detention. Ideally in executing the provisions of Art 49(1) (h) of the constitution the essence of it is to have suspects be release on favorable bond terms pending the hearing and determination of their indictment. Therefore, in considering whether to release an offender a trial court must determine both whether continued detention in remand custody remains necessary and is legally justifiable or excusable and the possibilities that the length of detention is not such that one has been denied his/ her rights to tried within a reasonable time.
7. These key factors provided the legal avenue under section 333(2) of the CPC for a convicted offender who was never release on bail to benefit the credit period served in pre-trial remand.
8. From the record of the instance case there is prima facie evidence that the applicant was on pre-trial detention facility for 3 years and 90 days. For those reasons such period has computed by this court in calculated as credit when he was deprived of his liberty as well as the failure by the state to prosecute his case within a reasonable time. The committal warrant to prison shall be amended based on the provisions of section 333(2) of the CPC to have the period in remand discounted appropriately.

SIGNED PUBLISHED VIA CTS AT ELDORET THIS 15TH DAY OF JULY 2025.

.....

R. NYAKUNDI

JUDGE

