



**Kagonda v Republic (Miscellaneous Criminal Application
E034 of 2025) [2025] KEHC 10145 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10145 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2025**

MA ODERO, J

JULY 11, 2025

BETWEEN

DICKSON MURAYA KAGONDU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Dickson Muraya Kagonda had been charged in the lower court vide Karatina Criminal Case No. E302 of 2022 with the offence of Forgery Contrary To Section 350 Of The Penal Code. The Applicant faced a second count of Stealing By Agent Contrary To Section 283(b) Of The Penal Code.
2. The Applicant pleaded ‘Not Guilty’ to both counts. The matter was heard in the lower court and vide a Ruling delivered on 20th March 2023 the learned trial magistrate convicted the Applicant on both counts. After listening to mitigation the court sentenced the Applicant to serve three (3) years imprisonment.
3. The Applicant has now filed this present application seeking to have the period which he spent in pre-trial detention factored into his sentence.
4. The court is empowered by Article 165(6) of *the Constitution* of Kenya 2010 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.”



5. Section 333(2) of the *Penal Code* Cap 63 Laws of Kenya provides as follows:-

“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, been held in custody, the sentence shall take account of the period spent in custody.” [Own emphasis]

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

6. The provisions of section 333(2) of the *Criminal Procedure Code* were considered in this case of *Ahamad Abolfadhi Mohammed & Another vs Republic* [2018] eKLR where the Court of Appeal held as follows:-

“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 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 332(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 appellant’s sentence of imprisonment to run from the date of their arrest on 19th June 2012.” [Own emphasis]

7. The Judiciary Sentencing Policy Guidelines clauses 7:10 and 7:11 state that:-

“The proviso to section 332(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. The Applicant alleged that the trial court failed to take into account the period of time he had spent in remand during the pendency of his trial.



9. I have carefully perused the Ruling on sentencing which was delivered on 20th March 2025. In that ruling the learned trial magistrate noted that

“The accused has been in custody since the date of arrest on the 19th August 2022. The accused has spent 2 years 7 months in custody.”

10. However the trial magistrate merely noted the period spent in remand but did not indicate that he had taken into account this period of pre-trial detention when meting out the sentence. From the sentencing ruling it appeared that the period of imprisonment was to run from the date of said ruling.

11. In order to remedy this oversight and in order to comply with Section 333 the court ought to have indicated that the sentence was to run from the date of arrest.

12. Finally this application is found to have merit and is allowed. The sentence of three (3) years imposed upon the Applicant shall commence from the date of arrest being 19th August 2022.

DATED IN NYERI THIS 11TH DAY OF JULY 2025

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MAUREEN A. ODERO

JUDGE

