



**Kariuki v Republic (Miscellaneous Criminal Application
E057 of 2024) [2025] KEHC 10121 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10121 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CRIMINAL APPLICATION E057 OF 2024**

**MA ODERO, J
JULY 11, 2025**

BETWEEN

FELIX KIMATHI KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein Felix Kimathi Kariuki had been charged in the Lower Court with the offence of Theft Of a Motorcycle Contrary To Section 278 Of The Penal Code.
2. The Applicant entered a plea of Guilty to the charge. The facts were read out and the applicant maintained his plea of 'Guilty'. He was convicted by the court.
3. The applicant was then invited to give his mitigation. Thereafter on 2nd May 2024 he was sentenced to a fine of Kshs. 100,000, in default to serve two (2) years imprisonment.
4. Section 333(2) of the [Criminal Procedure Code](#) Cap 75 Laws of Kenya provides as follows:-

“Subject to the provisions of Section 38 of the [Penal Code](#), every sentence shall be deemed to commence 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.” [Own emphasis]

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



6. In the case of *Abamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR the Court of Appeal held thus:-

“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 didn’t 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 that their sentence shall take effect from 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 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 19th June 2012.” [Own emphasis]

7. The *Judiciary Sentencing Policy Guidelines Clauses* 7:10 and 7:11 provide as follows:-

“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.”

8. I have carefully perused the lower court file. I note that the applicant was arrested on 27th January 2024 and was sentenced on 2nd May 2024. As such he spent a period of three (3) months in pre-trial custody.

9. There is no indication that the trial magistrate either noted or took into account the period the applicant had spent in custody.

10. I therefore direct that the terms of imprisonment imposed upon the Applicant is to be calculated from 27th January 2024, the date when he was arrested. It is so ordered.

DATED IN NYERI THIS 11TH DAY OF JULY 2025.

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MAUREEN A. ODERO

JUDGE

