



**Kipkorir v Republic (Criminal Miscellaneous Application
E135 of 2024) [2025] KEHC 9595 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9595 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E135 OF 2024**

RN NYAKUNDI, J

JULY 4, 2025

BETWEEN

BRIAN KIPKORIR APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this court is an application dated 24th day of October 2024 seeking orders as follows:
 - i. That the applicant is praying for fresh computation of sentence to include the time spent in remand custody.
 - ii. That the said period spent in remand custody to start from the date of arrest
2. In support of the application, the applicant deposed in his affidavit as follows:
 - a. That I am the applicant in this matter hence competent to swear this affidavit
 - b. That I was charged with an offence of stealing and sentence to 2 years' imprisonment
 - c. That I do not oppose the sentence/charge
 - d. That I pray this hon. Court to grant me leave to appeal out of time.
 - e. That I did not receive the court proceeding within the stipulated time
 - f. That my appeal has high chances of success
 - g. That whatever I have deposed above is true according to my knowledge and belief.
3. In our legal system an applicant has 14 days to file an appeal after the date of judgment of the trial court. The applicable provisions are within the text of section 349 of the CPC. The application for



an extension is made after the time for compliance has passed. The affidavit of the applicant does demonstrate the reasons which made him not to file the appeal within 14 days. The philosophy underpinning section 349 is that court orders, statutory provisions and practice directions are there to be obeyed. It follows therefore when considering whether to grant an extension of time for an appeal against a final decision in a case of any complexity, the courts should consider “all the circumstances of the case” including (a) the interest of the administration of justice; (b) whether the application for relief has been made promptly; (c) whether the failure to comply was intentional; (d) whether there is a good explanation for the failure; (e) the extent to which the party in default has complied with other rules, practice directions and court orders; (f) whether the failure to comply was caused by the party or his legal representative; (h) the effect which the failure to comply had on each party; and (i) the effect which the granting of relief would have on each party. In the case of a procedural appeal the court would also have to consider item (g), “whether the trial date or the likely trial date can still be met if relief is granted.”

4. It is against this background I grant leave in favour of the applicant to file an appeal out of time. The Deputy Registrar be and is hereby directed to avail the typed proceedings within 14 days from today’s date to enable the applicant to file his appeal

Decision

5. The applicant has moved this court in terms of section 333(2) of the CPC. Pursuant to this section the legislature mandated trial courts that in determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence. This means therefore that a trial judge may take time spent in pre-sentencing custody into consideration to impose a shorter sentence than would otherwise be appropriate. In some cases, no additional imprisonment is handed down and the time already spent in remand is considered to be sufficient sentence.
6. This statutory provisions allows the courts to take pre-sentencing custody into account at the sentencing stage. However, in applying this section I appreciate that there no guidelines that specify how or to what extent pre-sentencing is to be considered. In the recent times their has been an upsurge of petitions from across the country filed in various registries seeking interpretations of section 333(2) of the CPC. The use of presentencing credit have therefore an impact on individual sentencing revisions. The principle that credit can be granted for presentencing custody under section 333(2) of the CPC serves to mitigate certain injustices arising in pre-trial detention of the accused awaiting determination of his case. The Kenyan courts in compliance with Article 49 (1) (h) of the Constitution exercise discretion to grant bail to substantial numbers of accused persons that practically about half of all the accused persons fail to afford the conditions of bail. In the end they are remanded in custody pending trial of their respective cases
7. Focusing on this application am I satisfied that sufficient course has been shown by the applicant to give credit for the period spent in remand custody. The committal warrant shall be amended accordingly to discount the computed period the applicant spent in remand custody
8. It is ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 4TH DAY OF JULY 2025

R. NYAKUNDI

JUDGE

