



**Masambu v Republic (Criminal Miscellaneous Application
E060 of 2024) [2025] KEHC 10318 (KLR) (17 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10318 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E060 OF 2024**

JN KAMAU, J

JULY 17, 2025

BETWEEN

FREDRICK KAYUGIRA MASAMBU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant herein was charged with the offence of manslaughter contrary to Section 202 as read with Section 205 of the *Penal Code*. He was convicted and sentenced to five (5) years imprisonment.
2. On 14th May 2024, he filed the Notice of Motion application dated 9th May 2024 herein seeking an order that the period of three (3) years, three (3) months he spent in remand be considered as part of his sentence. He pointed out that he was arrested on 5th July 2020 and was sentenced on 11th October 2023.
3. He averred that the omission by the Trial Court was not in promotion of his right as stipulated in Articles 19(2), 3(a), 20(1), 23(1), 25(c), 50(1) and 50(2)(p) of the *Constitution of Kenya, 2010*. In this regard, he relied on Section 333(2) of the *Criminal Procedure Code* and the case of *Bethwel Wilson Kibor v Republic* Criminal Appeal No 78 of 2009 (eKLR citation not given) where the appellate court therein, while guided by Section 333(2) of the *Criminal Procedure Code*, reduced the appellant's sentence to time already served in remand before conviction as the trial court had not indicated whether it had taken into account the nine (9) years the offender had already served in custody.
4. The Respondent was not opposed to his application and hence both parties did not file their respective Written Submissions. This Ruling is therefore based on the Applicant's application and his affidavit evidence.



Legal Analysis

5. Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya) provides that:-

“Subject to the provisions of section 38 of the [Penal Code](#) (cap 63) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).
6. Further, the [Judiciary Sentencing Policy Guidelines](#) provide that:-

“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.”
7. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in [Ahamad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR.
8. Section 202 of the [Penal Code](#) that the Applicant herein was charged provides as follows:-
 1. Any person who by an unlawful act or omission causes the death of another person is guilty of the felony termed manslaughter.
 2. An unlawful omission is an omission amounting to culpable negligence to discharge a duty tending to the preservation of life or health, whether such omission is or is not accompanied by an intention to cause death or bodily harm.
9. Further, Section 205 of the [Penal Code](#) states as follows:-

“Any person who commits the felony of manslaughter is liable to imprisonment for life.”
10. It was therefore clear that the sentence of five (5) years that was meted on the Applicant was very lenient as the Trial Court had the option of sentencing him up to life imprisonment.
11. Notably, the Applicant was arrested on 5th July 2020. Although, he was granted bond, he did not seem to have posted the same. A reading of the Trial Court’s decision showed that it took into account the period he spent in remand during trial before meting the five (5) year sentence on him. The Trial Court rendered itself as follows:-

“I have also taken into account period accused has been in remand since 15th July 2020, now over 3 years...”
12. This court could not grant him the same period twice. His application was therefore misplaced.



Disposition

13. Accordingly, the upshot of this court's decision was that the Applicant's Notice of Motion application dated 9th May 2024 and filed on 14th May 2024 was not merited and the same be and is hereby dismissed.

14. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 17TH DAY OF JULY 2025

J. KAMAU

JUDGE

