



REPUBLIC OF KENYA



**KENYA LAW**  
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**Marigite v Republic (Miscellaneous Criminal Application  
E009 of 2025) [2025] KEHC 10120 (KLR) (11 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10120 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2025**

**MA ODERO, J**

**JULY 11, 2025**

**BETWEEN**

**DAVID MWATHI MARIGITE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein had been charged in the Lower court with the following offences:-

Count One

Conspiracy to commit a Felony contrary to Section 393 of the [Penal Code](#).

Count Two

Forgery contrary to Section 350(2) of the [Penal Code](#).

Count Three

Forgery Contrary to Section 350 (2) of the [Penal Code](#)

Count Four

Fraudulently procuring registration of land Title contrary to section 103(1) (c) of the [Land Registration Act](#) 2012.

Count Five

Obtaining Money by False Pretences Contrary to Section 313 of the [Penal Code](#).



Count Six

Obtaining Money by False Pretence contrary to Section 313 of the *Penal Code*.

2. The applicant entered a plea of 'Not Guilty' to all six counts. His trial commenced on 20<sup>th</sup> January 2021. Finally on 30<sup>th</sup> January 2025, the Learned trial Magistrate sentenced the Applicant to a fine of Kshs. 50,000/= in default six (6) months imprisonment on each count.
3. The Applicant now pleads that the period which he spent in remand custody was not considered in computing his sentence. He prays that the period of pre-trial detention be factored into his sentence.
4. The application was not opposed by the learned state counsel.
5. Article 165(b) of the *Constitution* of Kenya provides as follows:-

“ The High Court has supervisory Jurisdiction over subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court”
6. I have carefully perused the record in this matter. The learned trial magistrate did consider the mitigation raised by the Applicant. However in sentencing the trial magistrate did not appear to have noted or taken into account the period which the applicant had spent in remand custody.
7. The Applicant was arrested on 7<sup>th</sup> September 2020. He was then released on bail in February 2022.
8. By his own admission the applicant's bail was cancelled in May 2024 and thus he remained in custody until the date of his conviction.
9. The cancellation of the applicant's bail and his subsequent detention in remand were not due to the fact that he was denied bail or that he was unable to meet the bail terms.
10. The record at Page 42 clearly indicates that the Applicant's bond was cancelled on 30<sup>th</sup> May 2024 because he was being held at Nyahururu Prison on a different matter. The record further indicates that the court then issued an order to have the Applicant produced from Nyahururu Prison. On the date he was produced in court being 30<sup>th</sup> May 2024 the person who had deposited surety on behalf of the Applicant applied to be discharged on grounds that he was no longer able to ensure the applicant attended court when required. At this point the applicant's bond was cancelled and he was remanded into custody once again.
11. In my view therefore the period the Applicant spent in custody after the cancellation of his bond does not merit consideration in the computation of sentence in this particular case, since the applicant was being held in lawful custody on suspicion of his having committed another offence.
12. Based on the foregoing I find that the period which ought to have been considered in computing the applicant's sentence was the initial period he spent in remand custody from 7<sup>th</sup> September 2020 to 1<sup>st</sup> February 2022;-

- a period of Seventeen (17) months.
13. As stated earlier the learned trial magistrate did not in sentencing take into account this period. Accordingly I do hereby order that the term of imprisonment to be served by the Applicant is to be reduced by seventeen (17) months.



14. For clarity the applicant was convicted on six (6) counts. He was fined Kshs. 50,000/= on each count in default to serve six (6) months imprisonment. The period of imprisonment being default sentences must be served consecutively. This factor must be taken into account in computing the term of imprisonment to be served. It is so ordered.

**DATED IN NYERI THIS 11<sup>TH</sup> DAY OF JULY 2025**

.....

**MAUREEN A. ODERO**

**JUDGE**

