



REPUBLIC OF KENYA



**Wanjiku v Republic (Miscellaneous Application E031 of 2023)
[2025] KEHC 9472 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9472 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
MISCELLANEOUS APPLICATION E031 OF 2023**

TW OUYA, J

JULY 3, 2025

BETWEEN

SIMON KARIUKI WANJIKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Simon Kariuki Wanjiku, approached this court vide a Notice of Motion dated the 6th November 2023, seeking a revision of the sentence imposed by the trial court in Kigumo Senior Principal Magistrate's court Criminal Case No. E019 of 2021.
2. The application is brought under section 333(2) of the Criminal Procedure code on the basis that the trial court failed in the sentencing to factor in the period that the accused had spent in custody during the pendency of the trial. In his supporting affidavit of even date the Applicant avers that he was arrested on 3rd January 2021. From the record, he was sentenced on 11th October 2023.
3. The applicant together with Danson Mwaura Babu was charged with the offence of kidnapping contrary to section 257 as read with section 255 of the *Penal Code*. It is alleged that on the 13th December 2020, at Manyatta Village, Sabasaba Location in Murang'a South Sub County, within Murang'a county, jointly with others not before the court kidnapped Godwin Chege Hinga from the lawful guardianship of Ann Muiruri and Muiruri Njuguna Gatundu with intention of extorting money from the said Muiruri Njuguna Gatundu and Reuben Ndungu Muiruri.
4. The matter proceeded for full trial with the prosecution adducing evidence by calling 10 witnesses and produced exhibits. The accused were placed on their defence and each testified in their defence.



Subsequently, the trial court convicted both accused and sentenced each one of them to 7 years imprisonment. The Sentence read in part thus:

“.....In the circumstances, the accused persons are each sentenced to serve 7 years imprisonment. The sentence to run from the date of this sentence...”

5. The learned prosecution counsel Mr. P Mwangi in his brief oral submissions, submitted that the applicant took plea on 5th January 2021 and was convicted on 11th October 2023 and sentenced to 7 years’ imprisonment. He was incarcerated during the pendency of the trial and had applied to court for bond four times but was denied. The trial magistrate indicated in the sentence that it would run from the date of sentencing.
6. Counsel humbly submitted that the same was wrong in law and that the period spent in custody during the pendency of the trial should be factored and subtracted from the sentence meted.
7. The Applicant herein made a separate application from Danson Mwaura Babu seeking for similar orders for review. When forward records of the Lower Court, the Deputy Registrar indicated that the same related to the two applications. The two files were then tied together but there was no formal order for consolidation. Danson Mwaura Babu’s application was thus determined separately under CRIM MISC APP No E 030 of 2023 on 19th June 2025. Taking into account that the applications emanate from the same judgment under similar circumstances, it follows therefore that the appellant herein should benefit from similar orders.
8. I have considered grounds of the application, averments by the Applicant and the state counsel. I wish to start by relying on Section 333 (2) of the *Penal Code* which provides:

“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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

9. The Judiciary Sentencing Policy Guidelines also speak to the issue of the period spent by an accused person in pretrial custody at paragraph 7 thereof as follows:

“7.10 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.

7.11 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.”

10. In the case of *Bethwel Wilson Kibor vs Republic* [2009] eKLR, the Court of Appeal held that:

“By proviso to Section 333(2) of *Criminal Procedure Code* where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J. who sentenced the appellant did not specifically state that he had taken into account the 9 years’ period that the appellant had been in custody. The appellant told



us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”

11. The principle that flows from the above precedent and statutory provisions is that the trial court is required to consider the period that an accused person has spent in pre-trial custody during sentencing. In the present case, I note that the Applicant first appeared in court on 3rd January 2021 and stayed in remand custody throughout his trial period. He was sentenced on 11th October 2023. The trial magistrate erred in failing to factor in the period that the accused spent in custody during the pendency of the trial warranting interference by this court.
12. Based on the above, I find that there is a basis for interference with the sentence to the extent that the period amounting to two and nine months referred to here above ought to be subtracted from the 7 years sentence.
13. This appeal succeeds. The period served in custody during the pendency of the trial from 3rd January 2021 to 11th October 2023 is subtracted from the 7 years sentence.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 3RD JULY, 2025.

HON. T. W. Ouya

JUDGE

For Applicant.....Simon Kariuki Wanjiku (Present at Mwea Prison)

For Respondent.....Ms Manyal

Court Assistant.....Brian

