



**Lomongin v Republic (Miscellaneous Criminal Application
E003 of 2025) [2025] KEHC 12871 (KLR) (16 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12871 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E003 OF 2025**

**JM NANG'EA, J
SEPTEMBER 16, 2025**

BETWEEN

BENSON LOKIRIA LOMONGIN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By this Application dated 8th January 2025 the Applicant, who is serving out a prison term, prays for invocation of the provisions of Section 333 (2) of the Criminal Procedure Code to factor in the period he was in remand custody awaiting trial. Based on the Application and affidavit in support thereof, the Applicant avers that he was convicted in Molo Chief Magistrate's Criminal Case No. 306 of 2013 (Hon. Nyaga –SPM, he then was) of the offence of violent robbery and sentenced to 20 (twenty) years imprisonment. His appeal to this court against both conviction and sentence was dismissed. The Applicant now faults the trial court's order on sentence for failing to take into account the period he was in remand custody contrary to the provisions of section 333 (2) of the Criminal Procedure Code, saying he was arrested on 23rd April 2013 and remained in custody for 8 (eight) months until conclusion of the case.
2. Section 333 (2) of the Criminal Procedure Code in its proviso:

“where a person sentenced under Sub Section (1) has, prior to such sentence been held in custody, the sentence shall take account of the period spent in custody.”
3. The Prosecution Counsel does not object to the Application in so far as it relates to compliance with the provisions of Section 333 (2) of the Criminal Procedure Code supra.



1. The Prosecution Counsel has not refuted the Applicant's affidavit evidence that he was in remand custody during the period of his trial from the date of his arrest on 23rd April 2013 which date is not contested.
2. I accordingly agree with the Applicant that he was entitled to the benefit of the stated provisions of Section 333 (2) of the Criminal Procedure Code. It is directed that the sentence of 20 years sentence imposed shall take effect and be reckoned from 23rd April 2013 when he was arrested.

J. M. NANG'EA, JUDGE.

RULING DELIVERED THIS 16TH DAY OF SEPTEMBER, 2025 IN THE PRESENCE OF:

The Prosecution Counsel, Mr Wakasyaka.

The Applicant, present.

The Court Assistant, Jeniffer.

J. M. NANG'EA, JUDGE.

