



**Nyamongo v Republic (Criminal Miscellaneous Application  
E092 of 2025) [2025] KEHC 12673 (KLR) (17 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12673 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E092 OF 2025**

**A MABEYA, J  
SEPTEMBER 17, 2025**

**BETWEEN**

**DAVID NGASURA NYAMONGO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. David Ngasura Nyamongo ('the applicant') was jointly with another charged with the offence of murder of Hellen Nyamongo ('the deceased'). It was alleged that on 15/5/2010 at Obwari Location in Nyamira County they murdered the deceased.
2. They were tried and found guilty. They were convicted of the charge and sentenced to 30 years' imprisonment. The applicant appealed to the Court of Appeal against both the conviction and sentence. By a Judgment made on 4/4/2025, the Court of Appeal (Okwengu, Omondi & Ngugi JJA) dismissed the appeal in its entirety.
3. On 9/6/2025, the applicant lodged a Motion on Notice seeking that the period spent in custody during the trial be taken into consideration in the calculation of his sentence.
4. It is clear that section 333(2) of the *Criminal Procedure Code* requires that the trial court does take into consideration the period an accused has spent in custody when meting out its sentence. That is the preserve of the trial court. In the present case, the sentence was appealed against and the Court of Appeal confirmed the same. When the applicant appealed to that Court, this court was bereft of any jurisdiction to deal with his case. It is the Court of Appeal which could have interfered with the sentence.
5. My view is, the Court of Appeal having resoundingly confirmed the sentence of 30 years meted out to the applicant, this Court cannot interfere with that sentence. It is only the Court of Appeal that can re-look at the said sentence.



6. Accordingly, the application dated 9/6/2025 is without merit and is hereby dismissed.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 17<sup>TH</sup> DAY OF SEPTEMBER, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

