



**Koech v Republic (Criminal Miscellaneous Application  
E0150 of 2023) [2024] KEHC 4200 (KLR) (15 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4200 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
CRIMINAL MISCELLANEOUS APPLICATION E0150 OF 2023  
SM MOHOCHI, J  
APRIL 15, 2024**

**BETWEEN**

**ANDREW KOECH ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant, Andrew Koech was successful in High Court Criminal Appeal No. E024 of 2021 on the 27<sup>th</sup> July 2023 where by this Court reduced his imprisonment sentence from 20 years to 15 years;
2. The Applicant thereafter on 12<sup>th</sup> October, 2023 filed an application under Section 333 of the Criminal Procedure Code seeking that the time he had spent in remand custody be incorporated into his sentence.
3. Directions on the Appeal were issued on the 11<sup>th</sup> November 2023, for the application to be heard and disposed-off by way of written submissions and parties were to file their respective submissions.
4. The Respondent conceded to the Applicant’s application leaving the onus of scrutiny on this Court.
5. In in the case of Bethwel Wilson Kibor vs Republic [2009]eKLR the Court expressed itself as follows:-

“By proviso to section 333(2) of the Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take into 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 22<sup>nd</sup> September 2009 he had been in custody for 10 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.”

6. According to The Judiciary *Sentencing Policy Guidelines*:

“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. This Court has reviewed the entire Criminal Case No.64 of 2019 noting that the accused was arraigned in Court the 3<sup>rd</sup> June 2019 for an offence allegedly committed on the 15<sup>th</sup> of May 2019 and he was arrested on 31<sup>st</sup> May, 2019. The Court equally note that the sentence was silent as from when it shall run.

8. The Appellant was arrested and arraigned before Court on the 31<sup>st</sup> May, 2019 and arraigned to answer to the charge on the 3<sup>rd</sup> June 2019 and remained in remand custody throughout his trial notwithstanding having been admitted to bail.

9. I thus find the application to be partially of merit.

10. The sentence imposed on the accused is hereby varied to include:

The Sentence shall run from the 3<sup>rd</sup> June 2019.”

It is so ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU THIS 15<sup>TH</sup> DAY OF APRIL, 2024.**

**MOHOCHI S.M**

**(JUDGE)**

