



**Mwangi v Republic (Miscellaneous Criminal Application  
E036 of 2023) [2024] KEHC 10059 (KLR) (8 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10059 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
MISCELLANEOUS CRIMINAL APPLICATION E036 OF 2023  
MA ODERO, J  
AUGUST 8, 2024  
IN THE MATTER OF THE INTENDED APPEAL**

**BETWEEN**

**ROBERT MAINA MWANGI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein Robert Maina Mwangi filed this Notice of Motion seeking the following orders:-
  - “1. Spent
  2. That this Honourable Court be pleased to review the sentence meted of 10 years by taking into account the time spent in remand custody from the day of my arrest on 31<sup>st</sup> August, 2021.
  3. That this Honourable court be pleased to grant the prayer sought for the invocation of the provision of Section 333 (2) of the *Criminal Procedure Code* and Article 52(2) (p (9) of the *constitution* of Kenya into my sentence from the date of my arrest”
2. The Applicant had been charged with the offence of Attempted Defilement contrary to Section 9 (1) (d) read with Section 9 (3) of the *Sexual Offences Act* 2006. He faced an alternative charge of Committing an Indecent Act with a child contrary to Section 11(1) of the same Act .
3. Following a full trial and vide a judgment delivered on 12<sup>th</sup> May 2022, Hon. DN Bosisbori Resident Magistrate Mukurweini Law Courts convicted the Applicant of the offence of Attempted Defilement.



4. Thereafter the Applicant was granted an opportunity to mitigate and the Applicant was sentenced him to serve ten (10) years imprisonment.
5. The Applicant has not filed any appeal against his conviction or sentence nor does he seek review of the same. The Applicant only prays that the period of time which he spent in remand prison during the pendency of his trial be considered.
6. The Hon. DPP opposed the application arguing that given the serious nature of the offence of Defilement the sentence of ten (10) years was appropriate.
7. I note that the Applicant was arrested on 30<sup>th</sup> August 2021 and remained in custody until the date of his conviction which was 12<sup>th</sup> May 2022. This is a period of approximately eight (8) months.
8. Section 333 (2) of the *Criminal procedure Code* mandates a court to take into account the period of time spent by a suspect in custody prior to sentencing. Section 333(2) provides as follows:-

“Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) 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” (Own emphasis)
9. The provisions of Section 333(2) were elucidated in the case of *AHamad Abolfathi Mohammed & Another -vs- Republic* [2018] eKLR where the court of Appeal stated as follows:-

“By dint of section 333 (2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the *Criminal Procedure Code* was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.” [Own emphasis]
10. Accordingly I do allow this application and direct that the period the Applicant spent in custody during his trial be considered and that period be deducted from the ten (10) year sentence imposed upon him. It is so ordered.

**DATED IN NYERI THIS 8<sup>TH</sup> DAY OF AUGUST, 2024.**

**MAUREEN A. ODERO**

**JUDGE**

