



**Rono alias Jeremy v Republic (Miscellaneous Application E018 of 2024)  
[2024] KEHC 14487 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14487 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION E018 OF 2024**

**E OMINDE, J  
NOVEMBER 21, 2024**

**BETWEEN**

**KIPCHIRCHIR RONO ALIAS JEREMY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant together with another not before Court were initially charged with the offence of murder contrary to Section 203 as read with Section 204 of the Penal Code, Cap 63 of the Laws of Kenya. The particulars of the offence were that on the 9<sup>th</sup> day of March, 2020 at Kapsombe Village, Kamogich Location, in Keiyo North Sub-County within Elgeyo Marakwet County, murdered Andrew Kiplagat Rono.
2. However, he was convicted on his own plea of guilty on 2/12/2020 following plea bargaining from murder to manslaughter contrary to section 202 as read with section 205 of the Penal Code and sentenced to serve 8 years imprisonment.
3. The Applicant has now approached this Court with the Notice of Motion dated 24/01/2024 seeking re-sentencing under the proviso to Section 333(2) of the Criminal Procedure Code. The Applicant seeks to have his 8 years sentence factor in the time spent in remand custody.
4. The Applicant also filed submissions dated 15/2/2024, wherein he urged the Court to review his sentence of 8 years so as to include the time spent in remand custody being 1 year. According to the Applicant, the period spent in prison since his conviction constitutes adequate punishment as he has served two thirds of his sentence the objectives of imprisonment have been achieved and that he is now reformed.
5. The Application is opposed by the State vide the submissions filed by Prosecution Counsel, S.G. Thuo on 22/10/2024. He submitted that the offence of (8) years for the offence of manslaughter was



manifestly lenient as the same attracts a maximum sentence of life imprisonment. He further submitted that there is nothing on record to suggest that the Applicant has reformed to warrant interference by this Honourable Court. Counsel relied on the Supreme Case being Petition No. E018 of 2023, *Republic v Joshua Gichuki Mwangi & Others*; where the Court affirmed that the apex Court did not invalidate mandatory or minimum sentences in the Penal Code.

### Determination

6. The sole issue for determination is

“Whether the Applicant is entitled to review of sentence under the proviso to Section 333(2) of the *Criminal Procedure Code*”.
7. From the very onset, let it be noted that contrary to the submissions by Counsel for the State, the Applicant does not seek that his sentence be invalidated, he seeks that the period that he spent in remand custody be considered. It follows therefore that the Supreme Court decision cited by Counsel for the State is inapplicable.
8. Section 333(2) of the *Criminal Procedure Code* provides as follows:

“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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
9. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
10. On the above provision, the Court of Appeal in the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR, stated as follows:

“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 22<sup>nd</sup> 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.
11. In *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR the Court of Appeal held that:

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section of the *criminal Procedure Code*. 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 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 provision 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. We find that the first appellate court misdirected itself in that respect accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants' sentence of imprisonment to run from the date of their arrest on June 19, 2012. ”

12. In the case of *Bukenya v Uganda* (Criminal Appeal No. 17 of 2010) [2012] UGSC 3 (29 January 2013) the Court of Appeal stated that:

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause (8). It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement”

13. According to The Judiciary [Sentencing Policy Guidelines 2023](#):

Section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.

Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders – for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.

14. In this case, I have perused the record of the proceedings and it shows that plea was taken on 16<sup>th</sup> April 2020 and the Applicant was thereafter remanded in custody. There is no evidence that he was out on bond throughout the duration of the trial and I am therefore satisfied in this regard that he was in remand custody as stated.
15. I have also keenly perused the proceedings of 2<sup>nd</sup> December 2020 on the sentencing of the Petitioner. In the Court's pronouncement, there is certainly no evidence to indicate that Section 333(2) of the [CPC](#) was complied with. However, contrary to the assertion by the Applicant that he was in remand custody for over one year, the period in aggregate amounts to a total of 7 months and 16 days.



16. In this regard, I am satisfied that the Application by the applicant has merit. The same is allowed. Pursuant to the provisions of Section 333(2) of the [CPC](#) therefore, the sentence of 8 years imprisonment is to commence from 16/04/2020 being the date when the Applicant was arraigned in Court and remanded to await his trial and the said computation is also to include the period already served. The right of appeal of 14 days is explained

**READ DATED AND SIGNED AT ELDORET ON 21<sup>ST</sup> NOVEMBER 2024.**

**E.OMINDE**

**JUDGE**

