



**AKN v Republic (Miscellaneous Criminal Application E166 of 2021)  
[2024] KEHC 16344 (KLR) (17 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 16344 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS CRIMINAL APPLICATION E166 OF 2021**

**JM NANG'EA, J  
DECEMBER 17, 2024**

**BETWEEN**

**AKN ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. By this undated application the applicant 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. By affidavit in support of the application, the applicant avers that he was convicted in Nakuru Chief Magistrate’s Criminal Case No. 60 of 2008 of the offence of Incest Contrary to Section 20(1) of the *Sexual Offences Act* No. 3 of 2006 and sentenced to thirty (30) years imprisonment. Although he does not mention, he filed an appeal to this court vide Criminal Appeal No. 279 of 2009 which was marked as withdrawn on orders of the court issued on 8/8/2018. According to him, he was in remand custody throughout his trial before the lower court.
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 (Ms Sang) by a brief oral reply does not object to the application in so far as compliance with the provisions of section 333 (2) supra is concerned.
  1. The applicant implies that the lower court did not take into account the period he was in custody awaiting trial, in sentencing him . The trial court’s record has, however, gone missing and couldn’t be retrieved for the court’s perusal to confirm the applicant’s claim, despite sufficient time being given to the court’s registry. Extracts from the relevant register availed



to the court show that the applicant was arrested on 8/5/2008. According to the Prosecution Counsel, the police record, which were not produced in court, corroborate the court's register's information.

2. 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 8/5/2008, which date is not contested.
3. 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 30 years prison sentence imposed shall take effect and be reckoned from 8/5/2008 when he was arrested.
4. The application is therefore allowed.

**J. M. NANG'EA, JUDGE.**

**RULING DELIVERED THIS 17<sup>TH</sup> DAY OF DECEMBER, 2024 IN THE PRESENCE OF:**

The Prosecution Counsel, Ms Sang

The Applicant

The Court Assistant, Mr Lepikas

**J. M. NANG'EA, JUDGE.**

