



**Mwau v Republic (Miscellaneous Criminal Application E035 of 2024)
[2025] KEHC 13748 (KLR) (26 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 13748 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
MISCELLANEOUS CRIMINAL APPLICATION E035 OF 2024**

**TM MATHEKA, J
SEPTEMBER 26, 2025**

BETWEEN

SALIM MWAU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed an application seeking review of his sentence pursuant to section 333(2) of the Criminal Procedure Code.
2. He depones in the supporting affidavit:

That the learned judge erred in law and fact by not considering the period I spent in remand custody as per section 333(2) of the Criminal Procedure Code before my conviction on 26th July, 2023.

That I the applicant has been in remand custody for 8 months and 14 days a period which I pray this honourable court to be factored in my sentence.

For record purposes I was arrested on 15th November, 2022 before my conviction on 26th July, 2023.

The Applicant has 2 files:-

2. Kilungu MCCRC E592/22 where he was sentenced as follows:Shop breaking and stealing Contrary to Section306 (a) of the Penal CodeHandling stolen goods Contrary to Section 322(1) (2) of the Penal Code (Alternative Charge)Resisting arrest Contrary to Section 103 (a) of the National Police ... Act No. 11A of 2011.

Sentence



Count1 - sentenced to five (5) years in prison.

Count II – Sentence to eighteen (18) months in prison

Sentence to run concurrently.

The record shows that he was arrested on 15/11/2022 and Sentenced on 26/7/2023.

3. Kilungu MCCRC E156/2023

Charges - Conspiracy to defeat justice and interference with witnesses contrary section 117(a) of the Penal Code. He was Arrested on 9/3/2023 and sentenced to 1 year imprisonment on 31/3/2023.

The accused was arrested and charged with the offence in 156/2023 while in custody.

It is evident that that in sentencing him in E592/2022 the trial court did not take into account the period the applicant spent in custody as required by Section 333(2) of Criminal Procedure Code.

4. His application is meritorious – taking into account the period he spent in custody pending his sentence, I order that this sentence in Kilungu MCCRC E592/2022 to run from the day of his arrest: the 15/11/2022.

5. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY ON 26TH SEPTEMBER 2025

MUMBUA T MATHEKA

JUDGE

Applicant

Mr. Kazungu for State

CA Chrispol

