



**King'ori alias Rudiger v Republic (Miscellaneous Criminal Application
E088 of 2025) [2025] KEHC 13570 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 13570 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL APPLICATION E088 OF 2025
HI ONG'UDI, J
OCTOBER 1, 2025**

BETWEEN

PATRICK KING'ORI ALIAS RUDIGER APPLICANT

AND

REPUBLIC PROSECUTOR

RULING

1. Patrick King'ori alias Rudiger hereinafter referred to as the applicant filed the notice of motion dated 30th May 2025 seeking the following orders:
 - (b) Issue an order to the officer in charge where the applicant is currently held to compute the applicant's sentence from his date of arrest on 29/05/2024 instead of his date of conviction which was on 06/02/2025.
 - (c) Issue on order that the applicant may be released on time served upon the court exercising is discretion to review the sentence downwards.
2. The application is premised on the grounds on its face plus the applicant's supporting affidavit. This application relates to Nakuru CM's Criminal Cases No. E1243/2024 & No E1835/2024.
3. The application is not opposed by the Respondent.
4. I have had a chance of perusing the two criminal files referred to by the applicant. The following are my observations. Chief Magistrate's Criminal Case No. 1835/2024 was consolidated with E1212/2024 & E1344/2024 on 31/10/24. The applicant had however been first arraigned in court in Criminal Case No. 1835/2024 on 12th September, 2024.
5. Upon pleading guilty to the charge of stealing contrary to section 268 as read with section 275 of the penal code. The facts were read out to the applicant and he admitted them. The charge sheet shows



two counts but the trial court only recorded one count on which she later convicted and fined him Ksh 100,000/= in default one (1) year imprisonment on 6th February, 2025.

Chief Magistrate's Criminal Case No. E1243 of 2024

In this one he first appeared in court on 29th May, 2024 when plea was taken and he was granted bond of Kshs 200,000/= with a surety or cash bail of Kshs 150,000/= The record does not show whether he was released on bond or not. He was later convicted upon change of plea on 4th February, 2025. He was on 6th February, 2025 fined shs 100,000/= in default one (1) year imprisonment.

6. As indicated earlier the record in the two files which were handled by R. Kefa (Principal Magistrate) is not of much assistance as far as the applicant's Notice of Motion is concerned. There is nothing to show whether the Applicant was ever released on bond or whether he was in custody prior to the conviction. There are no remand warrants, bond approvals or receipts of payment of cash bail.
7. Section 333(2) of the Criminal Procedure Code provides thus:
 - (2) 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.
8. The above being the scenario prevailing in this matter, this court will take into account the period the applicant was in custody and this will run from the dates he first appeared in court. This is in consideration of the fact that the trial court did not take into account the provisions of section 333(2) Criminal Procedure Code while passing sentence.
9. The upshot is that the application has merit and is allowed. The following orders shall issue:
 - i. The default sentence in Nakuru C.M Criminal Case No. E1835/2024 as consolidated with E1212/2024 and E1344/2024 shall run from 12/09/2024.
 - ii. The default sentence in Nakuru C.M Criminal Case No. 1243/2024 shall run from 29/05/2024.
10. Let this Ruling be served on the Officer in charge Nyandarua G. K. Prison for execution of the same.
11. Orders accordingly

DELIVERED VIRTUALLY, DATED AND SIGNED THIS 1ST DAY OF OCTOBER, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

