



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MAKUENI

HCCRC.REV. NO. E095 OF 2025

DOMINIC MUSOMBA MATHEKA
.....APPLICANT

VERSUS

REPUBLIC

.....RESPONDENT

RULING

1. The applicant was jointly charged with Samuel Komu Kieti with burglary contrary to section 304(2) of the Penal Code. Particulars are that on the night of the day of 22nd December, 2023 at 2300hrs at Mutethe Village, Kalongo Sublcoaiton , Kikoko Location in Kilungu Subcounty within Makueni County jointly with others not in court broke and entered a dwelling house of Edward Maithya with intent to commit a felony.

On Count 2: he was jointly charged with Stealing Contrary to Section 268 as read with Section 275 of the Penal Code.

Particulars are that on the night of the day of 22 nd December, 2023 at

2300rs at Mutethe Village, Kalongo Sublocation Kikoko Location in

Kilungu Subcounty within Makueni County jointly with others

not in court stole, 42 Inch LG TV, Solar battery, inverter,

charger controller, amplifier, Fm radio, three duvet and clothes valued at Kshs. 90,000 the property of Edward Maithya.

In the Alternative charge he is charged with handling stolen goods contrary to section 322(1) (2) of the Penal Code.

Particulars are that on the night of the day of 18 th May 2024 at 0030hrs at Isovia Village, Kyamoso sublocation Isovia

Location in Kilungu

Subcounty within Makueni County otherwise than in the course of stealing dishonestly retained a Maasai sheet and a duvet

valued at Kshs. 2,700 knowing or having a reason to believe to be stolen goods.

2. After a full trial the applicant and his co accused were found guilty of count 1 and 2 and sentenced to 4 years imprisonment on count 1- and 3-years imprisonment on count 2.
3. The sentences were to run concurrently from 13/5/2025.
4. The applicant has filed Notice of Motion dated 19/5/2025 where he states:

In the matter of Section 333(2) of the Criminal Procedure Code...

- 1) *Am seeking review of my sentence pursuant section 333(2) of the Criminal Procedure Code.*
- 2) *...*

5. The application is supported by the affidavit of Dominic Musomba Matheka and such other grounds, reasons and argument as shall be adduced during the hearing . In the affidavit sworn on 19/5/2025 he depones;

1) That I am an adult Kenyan citizen of sound mind and the applicant herein hence competent to swear this affidavit.

2) That I was charged with an offence of burglary and stealing contrary to section 304(2) and section 268 as read with section 275 of Penal Code, tried and upon being found sentenced to serve 4 years and 3 years respectively imprisoned on 13.5.2025 and now held at Makueni Main Prison.

3) That I request this Hon. Court to consider and subtract the period I spent in remand custody(11 months and 23 days) which was not factored during sentencing as provided in section 333(2) of the criminal procedure code.

4) That I the applicant was arrested on 20/5/2024 have been in remand custody up to the date of my conviction on 13/5/2025, whatever is deponed herein is true to the best of my knowledge and belief.

6. The provision to section 333(2) of the Criminal Procedure Code states:

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.***

7. The applicant was arrested on 18/5/2024 and presented to court on 20/5/2024.
8. The applicant spent all that time in custody till the day he was convicted and sentenced.
9. The record regarding the sentence shows the trial court did not take into account of the period the applicant spent in custody.
10. The issue therefore is whether the application has merit.
11. I find that the application has merit.
12. The sentence is revised as follows:

*The applicant is sentenced to serve 4 years imprisonment on the 1st count , 3 years imprisonment on 2nd count: **the sentences to run concurrently with effect from 18/5/2024.***

Orders accordingly

Dated ,signed and delivered this 8th October 2025

Mumbua T Matheka

Judge

Applicant: present

CA Chrispol

Mr. Kazungu for state