



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mwenda v Republic (Criminal Revision E008 of 2025)  
[2025] KEHC 16011 (KLR) (28 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 16011 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
CRIMINAL REVISION E008 OF 2025  
RL KORIR, J  
OCTOBER 28, 2025**

**BETWEEN**

**SAMWEL MWENDA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Samuel Mwenda (Applicant) was the 1<sup>st</sup> Accused in Chuka High Court Criminal Case No. 2 of 2017. He was charged alongside Seberina Mwende with the murder of one Daudi Kijiru Mioru. The offence was allegedly committed on 30<sup>th</sup> April, 2017 at Gakauni village, Kanjoro location in Tharaka North Sub-County within Tharaka- Nithi County.
2. At the close of the trial, the Applicant was convicted as charged and sentenced to serve 18 years' imprisonment, while his co-accused was acquitted owing to insufficiency of evidence. The sentence was dated 11<sup>th</sup> November, 2019.
3. The Applicant filed the present undated Application under section 333(2) seeking orders that his sentence be reduced proportionally by the period he spent in pre-trial custody. His main ground was that the period he had spent in pre-trial custody was not factored into his sentence and that he wished his sentence to be reduced by the said period.
4. The Applicant's averments in the Supporting Affidavit mirror the grounds. He further deponed that Article 27(1) (4) and (5) of *the Constitution* granted him equal protection and benefit of the law and that such right affords him benefits accruing under section 333(2) of the Criminal Procedure Code.
5. At the hearing of the Application on 28<sup>th</sup> April 2025, the Applicant submitted that he only wished to have his sentence reduced by the 2 ½ years' time he had spent in remand.



6. The Application was opposed by the Prosecution through submissions dated 28<sup>th</sup> April 2025. They urged that the court must have taken into account the pre-trial custody period in arriving at the sentence which was way below the mandatory sentence of death. That failure to explicitly state that it had taken into account the pre-trial period did not vitiate the sentence.

### **Analysis and determination**

7. The only issue for my determination is whether this court should re-open the Applicant's sentence to include the pre-trial custody.

8. Section 333(2) of the Criminal Procedure Code provides:-

“333(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

9. Further the Judiciary Sentencing Policy Guideline provide:-

“The proviso under section 333(2) of the criminal Procedure Code obligates the court to take into account the time already spent in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that was not proportional to the offence committed. In determining the period of imprisonment that should be served by the offender, the court must take into account the period in which the offender was held in custody during the trial.”

10. I have looked at the sentence issued by Limo J. on 11<sup>th</sup> November, 2019. The court stated as follows:-

“This court has considered the mitigating factors advanced and the Supreme Court's decision in Muruatetu case. Taking everything into consideration, the 1<sup>st</sup> accused is hereby sentenced to serve 18 years' imprisonment. He has 14 days right of appeal.”

11. The sentence above was meted by a court of equal and concurrent jurisdiction. It is clearly stated without mentioning specifically the period spent in pre-trial custody that it had taken into consideration all factors and arrived at the 18- year imprisonment for the offence of murder. It is my considered view that the Applicant, not being satisfied with the sentence, ought to have appealed to the Court of Appeal.

12. I am persuaded by the reasoning of Ngugi J. (as he then was) in the case of John Kagunda Kariuki vs. Republic [2019] eKLR that:-

“In the present case, the Applicant's appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal.”

13. In the end, the Application is not merited. It is dismissed.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 28<sup>TH</sup> DAY OF OCTOBER, 2025.**



.....

**R. LAGAT - KORIR**

**JUDGE**

Ruling delivered in the presence of Applicant acting in person, Ms Rukunga for the Republic; Muriuki (Court Assistant)

