



Mutuku v Republic (Criminal Miscellaneous Application E039 of 2024) [2025] KEHC 15343 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEHC 15343 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL MISCELLANEOUS APPLICATION E039 OF 2024**

**TM MATHEKA, J
OCTOBER 15, 2025**

BETWEEN

JOSEPH MUSEMBI MUTUKU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Notice of Motion before me seeks the application of the proviso to Section 333 (2) of the Criminal Procedure Code to the applicant’s sentence.
2. He was tried, found guilty and convicted of robbery contrary to Section 296 (1) of the Penal Code in Makindu MCCRC 556/19 and sentenced to 10 years imprisonment on 28/5/2024.
3. Section 333 (2) of the Penal 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.

4. I have perused the record of the lower court. There is no evidence that the accused was ever on bond throughout the trial though he was admitted to bond of Kshs. 100,000 with surety of similar amount / cash bail of Kshs.30,000.
5. The record also shows that in pronouncing the sentence the court did not take into account the period the applicant had spent in custody.
6. The sentence is revised as following;



The applicant to serve 10 years imprisonment with effect from 8th June 2019

7. Orders accordingly

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 15TH OCTOBER 2025

MUMBUA T MATHEKA

JUDGE

Chrispol - Court Assistant

Applicant present

Mr. Kazungu for state

