

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. E063 OF 2024

HARON NDIRANGU

APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

1.This is the undated notice of motion filed by the applicant Haron Ndirangu. He seeks an order for consideration of the period he was in remand custody before determination of his case.

2.The respondent is not opposed to the application.

3.From the record before the court the applicant was charged with the following offences:

Count 1: Robbery with violence contrary to section 296(2) of the penal code

Count 2: Being in possession of Firearms contrary to section 89(1) of the Penal Code

Count 3: Being in possession of ammunitions contrary to section 89(2) of the Penal Code.

He was acquitted of the 1st count but convicted on the 2nd and 3rd counts. He was sentenced to 7 years imprisonment on each count and the sentences are to run concurrently.

4. There is no evidence of the applicant having appealed against the said Judgment. The record shows that the applicant was arrested on 3rd October, 2017 and was presented to court on 11th October, 2017. After conviction he was sentenced on 26th February, 2024.
5. This calculated brings his stay in remand custody to 6 years, 4 months plus 23 days prior to his conviction and sentence. It is clear that the trial court did not apply section 333(2) of the Criminal Procedure Code when sentencing the applicant. The said section provides as follows:

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.

In fact by all means the applicant has served his sentence. The application therefore succeeds.

6. I therefore order the officer in charge of the Nakuru G. K. Prison holding the applicant to re-calculate his prison term bearing in mind the period spent in remand prison (6 years, 4 months plus 23 days)

which should be reduced from the sentence meted against him. This should be acted on immediately.

7.Orders accordingly.

Delivered, dated and signed this 29th day of October, 2025 in open court at Nakuru.

**H. I. ONG'UDI
JUDGE**