



**Njoroge v Republic (Criminal Revision E1494 of 2024)
[2025] KEHC 15031 (KLR) (Crim) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15031 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E1494 OF 2024
AM MUTETI, J
OCTOBER 15, 2025**

BETWEEN

BERNARD NJOROGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has come to this court seeking to have his sentence reviewed.}}
2. The applicant has been charged with the offence of Gang rape contrary to Section 10 of the *Sexual Offences Act* No. 2 of 2006.}}
3. It was alleged that on the 30th January 2020 along Duruma River road junction in Nairobi in association with another not before court intentionally and unlawfully caused his penis to penetrate the vagina of EWT an adult without her consent.}}
4. The applicant was tried and convicted.}}
5. The trial court sentenced him to serve 15 years imprisonment.}}
6. The applicant's grievance before this court is that before his sentencing, he had been in custody for a period of 2 years and that the period was not taken into account by the trial court in sentencing him contrary to the provisions of Section 333 (2), of the Criminal Procedure Code.}}
7. It is that omission by the trial court that the applicant wishes to have remedied by this court in exercise of its revisionary and supervisory jurisdiction under Sections 362 and 364 of the Criminal Procedure Code as read together with Article 165(6) of *the Constitution* of Kenya.}}



8. This court has perused the trial court record and indeed it is true that the lower court did not take into account the period spent in custody before sentencing.}}

a. The Court of Appeal in *Ahamad Abolfathi Mohammed & Another v Republic* [2018]eKLR held that:-

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”

9. The trial court’s decision on sentence is therefore susceptible to review by this court to the extent that the trial court did not discount the 2 years pre-conviction and sentence period spent in custody.}}

10. The court finds that the order sentencing him to 15 years of imprisonment without regard to the provisions of Section 333 (2) of the Criminal Procedure Code is irregular and incorrect.}}

11. The same is hereby reviewed and substituted therefore with an order that the sentence of 15 years imprisonment shall be computed from the date of arrest and incarceration that being 14th February 2020.}}

12. It is so ordered}}

DATED, SIGNED and DELIVERED VIRTUALLY at NAIROBI this 15TH}} day of OCTOBER 2025.

A. M. MUTETI

JUDGE.

In the presence of:

Court Assistant: Kiptoo

Applicant present in person

Ms Ogega for the Respondent

