

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E107 OF 2025

SAMSON GATHUNGU KARIUKI.....

APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant herein **SAMSON GATHUNGU KARIUKI** has filed this application dated **29th May 2025** seeking to have the period of time which he spent in pre-trial detention factored into his sentence.
2. Counsel for ODPP left the matter to court.
3. The Applicant had been charged in the Lower Court at **Mukurweini** with the offence of **HOUSEBREAKING WITH INTENT TO COMMIT A FELONY CONTRARY TO SECTION 304 (1) (a) OF THE PENAL CODE**. The particulars of the charge were that

“On the 12th day of January 2025 at an unknown time in Gaikundu in Mukurweini Sub-County within Nyeri County you broke and entered the building used as a dwelling house by PETER GATHANGA with intent to commit a felony namely theft therein.”

4. The Applicant faced a second charge of **STEALING CONTRARY TO SECTION 268 (1) as read with SECTION 279 (b) OF THE PENAL CODE.** The particulars were that:-

“On the 12th day of January 2025 at unknown time in Gaikundu in Mukurwe-ini Sub-county stole assorted clothings and beddings, 4 metallic cups, one mug cup, a white Amaya charger and cable, a stainless steel metallic spoon, nails, a white earphone, a mobile phone black in colour and a panga all valued at Kshs. 8,000/= the property of PETER GATHANGA.”

5. The Applicant faced an alternative charge of **HANDLING STOLEN GOODS CONTRARY TO SECTION 322 (1) (2) OF THE PENAL CODE.**

6. The Applicant entered a plea of **Not Guilty** to all the charges and the trial commenced in the Lower Court.

7. Later the **26th May 2025** the Applicant changed his plea to **GUILTY** on all counts. The facts were read out to him and he maintained the plea of Guilty. After listening to mitigation the Applicant was sentenced to serve **one (1) year** in prison.

8. The Applicant has now filed this present application seeking to have the period which he spent in pre-trial detention factored into his sentence.

9. The court is empowered by **Article 165 (6)** of the **Constitution of Kenya 2010** to review a decision by a subordinate court. **Article 165(6)** provides:-

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function but not over a superior court.”

10. **Section 333(2)** of the **Penal Code Cap 63** Laws of Kenya provides

as follows;-

“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 sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.” [Own emphasis]

It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.

11. The provisions of **section 333(2)** of the Criminal Procedure Code

were considered in this case of **AHAMAD ABOLFADHI MOHAMMED & Another vs REPUBLIC [2018] eKLR** where the **Court of Appeal** held as follows:-

**“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 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 332 (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 appellant's sentence of imprisonment to run from the date of their arrest on 19th June 2012." [Own emphasis]

12. The ***Judiciary Sentencing Policy Guidelines clauses 7:10 and***

7:11 state that:-

"The proviso to section 332(2) of the Criminal Procedure Code obligates the court to take into account the time already served 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 is not proportional to the offence committed. In determining the

period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

13. The Applicant has prayed that the period he spent in remand be

factored into her sentence. I have carefully perused the proceedings in the Lower Court. I note that the learned trial magistrate did not at all put into consideration the period spent in pre-trial detention. The Applicant was arrested on **20th January 2025** and was sentenced on **16th April 2025**. Thus he spent a total of **87 days** in remand.

14. The Applicant is entitled to have this period of **87 days** discounted

from his sentence. I therefore direct that the sentence of **one (1) year** imprisonment is to run from the date of arrest being **20th January 2025**. It is so ordered.

Dated in Nyeri this 14th day of November 2025

.....
MAUREEN A. ODERO
JUDGE

ORIGINAL