



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT MOMBASA COUNTY  
COURT NAME: MOMBASA HIGH COURT  
CASE NUMBER: HCCRA/E044/2023  
KAZUNGU KITS AO ALIAS BABU VS THE REPUBLIC

JUDGMENT

(Being an appeal arising from the original conviction and sentence in Shanzu Chief Magistrate's Court Criminal Case No. SO E055 of 2022, delivered by Hon. Nelly W. Kariuki on 13th April 2023.)

**J U D G M E N T**

1. The Appellant filed a Petition of Appeal dated 2nd June 2023, raising four grounds of appeal. Subsequently, he filed a Notice of Motion under Section 350 of the Criminal Procedure Code, thereby abandoning the initial grounds and opting to rely solely on one ground anchored under Section 322 of the Criminal Procedure Code.
2. The Appellant contended that the trial court failed to take into account the period he had spent in custody during the pendency of the trial.
3. Upon perusal of the record, it is evident that the Appellant did not meet the bond terms and consequently remained in custody throughout the trial.
4. I have also carefully examined the proceedings and note that the trial court did not take this period into consideration at the time of sentencing. As provided under Section 333(2) of the Criminal Procedure Code, the trial court is mandated to take into account the period an accused person has spent in custody prior to sentencing.
5. Accordingly, this appeal succeeds on that ground alone. The sentence imposed by the trial court shall therefore run from the date of the Appellant's arrest, being 1st May 2022.

DATED, SIGNED AND DELIVERED at Mombasa, this 14 day of November 2025.



**HON. LADY JUSTICE W. K. MICHENI  
JUDGE**

- In the presence of:  
**The appellant**
- **For the Prosecution:** Mr. Ngiri
- **Court Assistant:** Ms. Bebora

SIGNED BY/FOR:  
HON. LADY JUSTICE WENDY MICHENI



THE JUDICIARY OF KENYA.  
MOMBASA HIGH COURT  
HIGH COURT CRIMINAL  
DATE: 2025-11-16 00:21:37

