

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

MISC. CRIMINAL APPLICATION NO. E096 OF 2022

VINCENT KIBET

APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

- 1.This is the applicant’s undated notice of motion filed on 21st September, 2022. He seeks to have the court order for application of section 333(2) of the Criminal Procedure Code to his sentence, in Nakuru Chief Magistrate’s Criminal Case S. O. No. 2 of 2019.
2. The respondent through Mr. Kihara prosecution counsel is not opposed to the application.
- 3.The applicant (Vincent Kibet) was charged and convicted of the offence of rape contrary to section 3(1) (a)(c) as read with section 3(3) of the Sexual Offences Act No. 3 of 2006. He was sentenced to ten (10) years imprisonment on 31st March, 2022. There was no application of section 333(2) of the Criminal Procedure Code during sentencing which provides as follows:
Section 333(2) of the Criminal Procedure Code 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.

4. From the record the applicant was arrested on 4/2/2019 and presented to court on 5/2/2019. He was never released on bond so he was in remand custody up to the time of conviction and sentence on 31st March, 2022. There is no evidence of him having filed a similar application before.
5. His application therefore succeeds. The period he was in remand which is three (3) years plus two (2) months MUST be taken into account as his sentence is calculated. The officer in charge of the G. K. Prison where the applicant is serving is accordingly directed. His sentence should run from 4/012/2019.
6. Orders accordingly.

**Delivered, dated and signed this 12th day of November, 2025
in open court at Nakuru.**

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