

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E108 OF 2025

GERALD MWANGI PAUL.....APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant **GERALD MWANGI PAUL** has filed this application seeking to have the period which he spent in custody pending his trial to be deducted from the sentence imposed upon him.
2. The Applicant had been charged in the Lower Court vide **Karatina Criminal Case No. E118 of 2025** with the Offence of **STEALING CONTRARY TO SECITON 268(1)** as read with **SECTION 278 OF THE PENAL CODE.**
3. The particulars of the offence were that

“On the 21st day of March 2025 at around 1100 hrs in Ndima-ini Sub-location in Mathira East Sub-county of

Nyeri County stole 4 bags of Poultry manure valued at Kshs. 2,000/= the property of JANET MWIHAKI.”

4. The applicant entered a plea of **‘GUILTY’** to the charge. The facts were read out and the applicant maintained his plea of guilty. He was then convicted of the offence of Theft.
5. The applicant was allowed an opportunity to mitigate and was thereafter sentenced to serve **one (1) year** in prison. The applicant now prays that the period he spent in remand be deducted from this sentence.
6. 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.”

7. **Section 332 (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 into account of the period spent in custody.

[Own Emphasis]

8. A close perusal of the typed and certified proceedings from the trial court, indicates that the trial magistrate **did not** take into consideration the period which the applicant had spent in remand as required by **Section 333 (2)** of the Penal Code.
9. The record indicates that the applicant was arrested on **28th March 2025** and he was convicted on **1st April 2025**. The sentence imposed upon the Applicant will therefore run from the date of his arrest being **28th March 2025**. It is so ordered.

Dated in Nyeri this 14th day of November, 2025.

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MAUREEN A. ODERO
JUDGE