

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT ELDORET**  
**CRIMINAL PETITION NO E084 OF 2023**

**AMOS WANYONYI.....**  
**PETITIONER**

**VERSUS**

**REPUBLIC.....**  
**RESPONDENT**

**Coram: Before Justice R. Nyakundi**  
**M/s Sidi Kirenge for the State**

**RULING**

1. Before this Court is an application dated 12<sup>th</sup> day of October 2023 seeking the following orders:
  - a. *That, the Petitioner is seeking a reduction of his sentence on time spent in remand custody under Section 333(2) of the Criminal Procedure Code cap 75 Laws of Kenya.*
  - b. *That, the Petitioner is seeking for his sentence to commence from the time he was placed in pre-trial custody on 12<sup>th</sup> September 2021. (12-09-2021 to 13-06-2023) which comes to (1) One year and nine (9) months.*
  - c. *That, the Petitioner is petitioning the Honourable Court on re-sentencing under Article 50 (2)(q) of the Constitution of Kenya 2010 and Section 362 as read with Section 364 of the Criminal Procedure Code.*
  - d. *That, the Petitioner's focus in this petition is only related to the sentence only.*
  - e. *That, the Petitioner is praying to be present during the hearing and determination.*
2. In support of the application is the annexed affidavit of the Petitioner:

- a. *That, I am a Kenyan citizen who is an adult, male, of sound mind hence competent to swear this affidavit.*
- b. *That, I was charged with two counts of the offence of Child prostitution c/Section 15 of the S.O.A No. 3 of 2006 and sentenced to serve 10 years for each count to run concurrently at CM's Court Eldoret Hon. Odenyo in S.O Case No. 239 of 2018 delivered on 13<sup>th</sup> June 2023*
- c. *That, during the sentencing the time spent in remand custody was not factored in, which was One (1) year and (9) months, (12-09-2021 to 13-06-2023).*
- d. *That, today 12<sup>th</sup> August 2023 I am petitioning the honourable Court to kindly consider my petition to reduce the time spent in pre-trial custody from my 10 years' sentence.*
- e. *That, the Petitioner is also seeking a review on his sentence due to mitigation factor and personal circumstance.*
  - a) *He is a young man of 27 years and has a whole future ahead of him*
  - b) *He has left a young family with one Kid that he had left at Home and he was the sole bread winner*
  - c) *I am genuinely remorseful for what I did and I am now repentant and I have already asked for forgiveness from those that I wronged*
  - d) *He is now enrolled in a vocational training program in the prison industry to acquire skills in carpentry and joinery.*

### **Decision**

3. The application before this Court has been filed seeking leave of this Court for a re-sentencing primarily on the verdict imposed by the trial Court placing special reliance on the provisions of Section 333(2) of the Criminal Procedure Code. The jurisdiction of this Court on revision of

sentence or any such order of an inferior Court is provided for under Section 362 as read with Section 364 of the Criminal Procedure Code.

4. In the Kenyan criminal legal system, the right of an accused person to have the time spent in pretrial detention credited against his or her sentence is grounded in the Constitution under Chapter 4 on the Bill of Rights and also its provisions on the speed trial under Article 50(2)(e) of the same Constitution. The operative provisions remain Section 333(2) of the Criminal Procedure Code.
5. In our neighboring common law heritage, pretrial detention credit is grounded in the Uganda Constitution. The fundamentals of that provision has been discussed in their level of Courts particularly the Supreme Court as demonstrated in the following authorities;

**a) *Kateregga v Uganda (High Court Criminal Session Case No. 24 of 2011)*** *The ruling emphasizes that the time an accused person spends on remand must be taken into account when sentencing, a principle that has been consistently affirmed by the Supreme Court.*

**b) *Kizito Henry v Uganda (Supreme Court Criminal Appeal No. 12 of 2008)*** *This decision reinforced the principle of crediting detention. The Supreme Court reduced the appellant's sentence by the number of years he had spent in custody, sending a clear message to lower Courts.*

**c) *Tigo Stephen v Uganda (Supreme Court Criminal Appeal No. 10 of 2016)*** *This case is a recent authority on the matter. The Supreme Court's decision highlighted the unconstitutionality of prolonged pretrial detention and reaffirmed the legal obligation to deduct any time spent in custody from the final sentence.*

6. The Judiciary Sentencing Guidelines issued on September 2023 provides also a source in sentencing on the right to pretrial credit to ensure uniformity and clarity in applying Section 333(2) of the Criminal Procedure

Code. These guidelines explicitly require trial Courts to credit time spent in remand.

7. What is the practical implications of the provisions on pretrial detention credit for those who are sentenced to custodial sentences? The import of the provisions and the judiciary sentencing guideline 2023 Trial Courts are legally obligated to consider the time an accused person has spent in custody upon a finding of guilty and conviction of the offence. This period is primarily for those accused persons who are in remand custody during the pendency of the trial and its conclusion followed with conviction and sentence verdict. This credit period during pretrial detention or remand custody is not a matter of judicial discretion but a Constitutional imperative under the Bill of Rights being a Chapter 4 our Constitution 2010. Therefore, that period spent in lawful custody prior to the trial and conviction of an accused person must be specifically credited to him or her within the ambit of the terminable sentence imposed by a trial Court.
8. The significance of Section 333(2) of the CPC does demonstrate the rights under the principles governing bail of the accused person prosecuted in various levels of Courts including the High Court. The systematic over-reliance on punitive cash bail or cognizance of surety and re-enforced the ladder principle which detects that released on the least onerous terms should be the default position of the Courts. (*See R Vs Antic, 2017 SCC 27 (CanLII), (2017) 1 SCR 509*).
9. It is with this background in mind I affirm that unreasonable bail terms under Article 49(h) of the Constitution has contributed immensely to the upsurge of incarcerated accused persons in our correctional facilities across the Country. It should be known to **all and sundry** that reasonable bail terms are an essential element of a functional justice system which upholds human rights and the doctrine of the presumption of innocence.
10. The Kenya legal system has enacted various instruments including the Constitutional framework which clarifies that bail terms should be

reasonable and proportionate to the accused's means. This is to prevent unnecessary pretrial detention and ensure those in custody are only in that class who can't afford even the lowest of bail terms. In the provisions of the Constitution, they should benefit from a speedy trial within a reasonable time.

11. In the case at bar this Court addresses the grant of pre-sentence credit in which the record shows that the applicant was arraigned in Court on 1<sup>st</sup> November 2018 charge with the following counts:

**Count I:** *The applicant was charged of benefiting from a child prostitution with the brief facts being on the 20<sup>th</sup> day of October 2018 at Lusweti farm in Likuyani Sub County within Kakamega County threatened Damaris Naliaka a child aged 14 years to procure her for sexual intercourse.*

**Count II:** *The applicant was charged of benefiting from a child prostitution with the brief facts being on the 20<sup>th</sup> day of October 2018 at Lusweti farm in Likuyani Sub County within Kakamega County unlawfully threatened Fridah Mukasia a child aged 14 years to procure her for sexual intercourse.*

**Count III:** *The applicant was charged of benefiting from a child prostitution with the brief facts being on the 20<sup>th</sup> day of October 2018 at Lusweti farm in Likuyani Sub County Caleb Wawire a child aged 16 years to procure him for sexual intercourse.*

**Count IV:** *The applicant was charged of benefiting from a child prostitution with the brief facts being on the 20<sup>th</sup> day of October 2018 at Lusweti farm in Likuyani Sub County within Kakamega County threatened Felix Wafula a child aged 16 years to procure him for sexual intercourse.*

12. In a judgment delivered on 13<sup>th</sup> June 2023, the Petitioner was sentenced to serve ten (10) years imprisonment for the counts which sentence was ordered to run concurrently. The Petitioner herein had been

arraigned in Court on 1<sup>st</sup> November 2018 and was released on bond on 13<sup>th</sup> November 2018. A look at the Court record indicate that the Applicant’s bond was cancelled on 12<sup>th</sup> October 2021. The Petitioner was in custody afterwards until the date of judgement.

13. The pretrial detention of an accused person threatens the provisions of Articles 25(a), 26, 27(4), 28 and 29 on fundamental rights and freedoms. That is the very reason why circumstances on pretrial detention demands additional credit in the event the offender or accused person has been found guilty, convicted and subjected to a sentencing process which culminates in a custodial sentence. While credit is typically calculated mathematically, the Court acknowledges that there may be rare cases where the “interests of justice” demand extra credit for restrictive bail conditions, and any such credit is applied to the overall sentence and is not purely a mathematical exercise.

14. In the instant application on review of sentence under Section 333(2) of the Criminal Procedure Code, the only material evidence on record shows that the Applicant was in pretrial detention for a period of one (1) year and eight (8) months. That being the case, the applicant is entitled to credit period in which he was in remand custody pending trial and conclusion of his case. That the committal warrant shall be amended to discount the one year and 8 months in compliance with Section 333(2) of the Criminal Procedure Code as read with Article 50 (2) (p) (q) of the Constitution. It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 14<sup>TH</sup> NOVEMBER  
2025**

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**R. NYAKUNDI**

# JUDGE