

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KISUMU**  
**CRIMINAL DIVISION**  
**MISC. CRIMINAL APPLN NO. E104 OF 2025**

**GEOFREY KIPYEGON MUTAI ..... 1<sup>ST</sup> APPLICANT**

**ROBERT KIPYEGON KORIR ..... 2<sup>ND</sup> APPLICANT**

**- VERSUS -**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

1. **GEOFREY KIPYEGON MUTAI** and **ROBERT KIPYEGON KORIR** were jointly charged with the offence of the murder of Dennis Kiplangat Rono (the deceased). It was alleged that on **5/6/2021** at Kadinda Kambenje village, Sigoti Location in Kisumu County, they murdered the deceased.
2. They were tried and found guilty. They were convicted of the charge and each sentenced to 20 years' imprisonment.
3. On **21/5/2025**, they lodged a Motion on Notice seeking that the period spent in custody during the trial be taken into consideration in the calculation of their sentences. They computed the same as being 3 years and 9 months.
4. It is clear that **section 333(2) of the Criminal Procedure Code** requires that the trial court does take into consideration the period an accused has spent in custody when meting out its sentence. That is the preserve of the trial court. In

the present case, the sentence was meted out by **Shariff J** on 27/3/2025. In the sentence, the good Judge observed thus:

***“Accordingly, I impose the following sentences:***

...

...

***These sentences are calculated to account for any pre-trial detention served by both accused persons pursuant to section 333(2) of the Criminal Procedure Code.”***

5. My view is, the Court sentencing the applicants considered ***section 333(2) of the Criminal Procedure Code***. There is no room for this Court to relook at it. It is only the Court of Appeal that can relook at the said sentence.
6. Accordingly, the application dated **21/5/2025** is without merit and is hereby dismissed.

It is so ordered.

**DATED and DELIVERED at Kisumu this 26<sup>th</sup> day of November, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**