

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E046 OF 2025

REUBEN NJUKIA MWANGI.....

APPLICANT

-VERSUS-

REPUBLIC.....PROSECUTOR

RULING

1. The Applicant herein **REUBEN NJUKIA MWANGI** has filed an application dated **3rd February 2025** seeking revision of his sentence.
2. The Applicant states that he was convicted in two separate and distinct charges. He prays that the sentences meted out against him by the two courts be combined and be served concurrently.
3. The Applicant further pleads for revision of sentence on grounds that the period which he spent in remand custody during his trials was not factored into the sentences.

4. The **ODPP** opposed the application for revision through the Repeating Affidavit dated **21st August 2025** sworn by **Ms KANIU** a Principal Prosecution Counsel.
5. The Power of the High Court to review sentence is set out in **Section 362** of the **Penal Code, Cap 63 Laws of Kenya** which provides as follows:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate Court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings in any such subordinate court.”

6. As conceded by the Applicant he was convicted for two different offences in two different courts. In Mukurweini Magistrates Court Case No. **MCCR E094/2024** the Applicant was charged “Being in Possession of Cannabis Sativa contrary to Section 3(1) as read with section 3(2) of the Penal Code. In the same file the applicant faced a second Count “Being in

Possession of Government stores contrary to Section 324(2) of the Penal Code”.

7. Vide a judgment delivered on **17th January 2025**, the Applicant was convicted on the first and second counts. He was sentenced to serve **six (6) years** imprisonment on count No. 1 and **one (1) year** imprisonment on Count No. 2. The sentences were to run concurrently.
8. In a separate file being Mukurweini **Criminal Case No. E058 of 2024**, the same Applicant faced a charge of shop-Breaking contrary to Section 30(a) of the Penal Code. In the same file he faced a second Count of “Stealing in a shop contrary to Section 268(1) as read with Section 275 of the Penal Code.”
9. The Applicant pleaded **Guilty** and was convicted on both counts. He was sentenced to serve **three (3) years** imprisonment on each count and the sentences were to run concurrently.
10. I have carefully perused both Lower court files. I am satisfied

that the trials were properly conducted and that the Applicant was accorded a fair trial in both cases. I find no evidence of breach of procedure in either case.

11. Regarding the sentences imposed on the Applicant, the said sentences

were lawful. In case **No. E094/2024** it was noted that the Applicant was a repeat offender and thus in my view custodial sentences were appropriate. I find no reason to interfere with the sentences imposed in either case and the same are hereby upheld.

12. The Applicant had sought to have the sentences in the two files

combined and sought orders that he serve the sentences concurrently. Each file represent a separate and distinct charge/offence. The offences in the two files are not related. They were not committed on the same dates and neither do they form part of the same transaction. As such there exists no reason to have the sentences combined. This prayer is rejected and court directs that the sentences on each file be served consecutively as imposed by the trial courts.

13. Finally the Applicants prayed that the period which he spent in remand custody be discounted from his sentences.

14. 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.”

15. **Section 333(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 account of the period spent in custody. [Own emphasis]

16. The provisions of **section 333(2)** of the Criminal Procedure Code

were expounded on in this case of **AHAMAD ABOLFADHI MOHAMMED ANOTHER -VS- REPUBLIC [2018] eKLR** where the Court of Appeal held as follows:-

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code.

.....By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced.

Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence

shall take effect from the date of their conviction by the trial court. With respect there is no evidence that the court took into account the period already spent by the appellants in custody.

“Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 332 (2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find

that the first appellate court misdirected itself in that respect and should have directed the appellant's sentence of imprisonment to run from the date of their arrest on 19th June 2012." [Own emphasis]

17. The ***Judiciary Sentencing Policy Guidelines clauses 7:10 and***

7:11 state that:-

"The proviso to section 332(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial."

18. Following his conviction the both trial courts did accord to the applicant

the opportunity to mitigate. In **MCC No. E058 of 2024** the trial magistrate only considered the pre-sentence report prepared by the Probation office. The court did not take into account the period of time which the Applicant had spent in remand. I therefore direct that the sentences imposed in case **No. E058/2024** will run from the date of arrest being **12th February 2024**.

19. In case **No. E094/2024** the Learned trial magistrate did consider the

fact that the Applicant had been in custody since 10/2/2024. The trial magistrate did direct that the sentences imposed upon the Applicant would run from **10th February 2024**. Therefore the trial court did consider and take into account the period spent in remand.

20. Finally the court makes the following orders;-

1) The application for revision of sentences in Criminal cases Nos E058/2024 is dismissed.

- 2) The prayer seeking to have the sentences in the two files combined is dismissed.
- 3) The sentences imposed in File **No. E094/2024** are confirmed and upheld and will be served as is.
- 4) The sentences imposed in File No. **E058/2024** are confirmed and upheld and will run from the date of arrest being **12th February 2024**.

Dated in Nyeri this 21st day of November 2025.

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MAUREEN A. ODERO
JUDGE