

**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KERICHO**  
**MISC.CRIMINAL APPLICATION NO. E021 OF 2025**

**JANE CHEBET**  
**CHEPKWONY.....APPLICANT**

**- V E R S U S -**

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

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**RULING**

1. The subject matter of this ruling is the application for sentence review filed on 24<sup>th</sup> March, 2025. The main order sought by the applicant is for the period she spent in custody to be factored in the sentence.
2. I have perused the Court record and it is apparent that the applicant underwent trial and was convicted for the offence of murder Contrary to Section 203 as read with Section 204 of the Penal Code and sentenced to serve 20 years imprisonment.
3. This Court has now been beseeched to review the aforesaid sentence and factor in the period spent in custody.

4. It would appear from the wording of the relevant provisions of the statute that it is couched in mandatory terms. Section 333 (2) of the Criminal Procedure Code provides

***“Section 333 (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 the 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.”***

5. A careful reading of the above proviso, clearly show that the Court should mathematically show that it factored in the period spent in custody and deducted the same from the sentence pronounced.

6. In the instant case, the sentence meted out against the applicant was pronounced on 21<sup>st</sup> November, 2018. The

question is whether the sentencing Court took into account the period spent in custody while sentencing?

7. When pronouncing the sentence, Lady Justice Mumbi Ngugi (as she then was) stated *inter alia* as follows:- ***“I note that they have been in custody for the last five, indeed almost six years, and I take, this period into consideration in passing sentence. I hereby sentence the two accused persons, Jane Chebet Chepkwony and Kennedy Cheruiyot Ngetich to a term of imprisonment for twenty years.....”***

8. A critical examination of the above excerpt will reveal that it is not clear whether the period spent in custody was deducted from the pronounced sentence. It is clear that the applicant had spent in custody pending trial a period of 6 years.

9. It is important for the Court to clearly show the sentence meted out and to also show it deducted the period spent in custody from the sentence pronounced.

10. In the circumstances of this instant case, the applicant is hereby given the benefit of doubt. Consequently, the

sentence of 20 years pronounced against the applicant is reviewed by taking into account and deducting the period of six (6) years spent in custody.

11. In the end, the applicant, should therefore serve 14 years imprisonment instead of 20 years from the date of sentence i.e. 21<sup>st</sup> November, 2018. The Prison authorities calculate the period so far to determine the term remaining to be served and advise the applicant.

**Dated, signed and delivered at Kericho this 27<sup>th</sup> day of November, 2025.**

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**J. K. SERGON**  
**JUDGE**

In the Presence of:-

C/Assistant - Rutoh

Prosecutor - Maundu

Accused - Present in Person