



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Kiboi v Republic (Criminal Revision E160 of 2023)  
[2025] KEHC 17776 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17776 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYERI  
CRIMINAL REVISION E160 OF 2023  
MA ODERO, J  
NOVEMBER 28, 2025**

**BETWEEN**

**ERICK WANJOHI KIBOI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant Erick Wanjohi Kiboi has filed this application seeking to have the sentence imposed upon him by the Lower Court reviewed.
2. The Applicant had been charged vide Nyeri CMCC No. 26 of 2019 with the offence of rape contrary to section 3 of the [sexual offences act](#) 2006. The particulars of the charge were that  

“On the 20<sup>th</sup> day of May 2019 at xxxxxx area in Nyeri District within Nyeri County intentionally and unlawfully caused your penis to penetrate the vagina of EMK without her consent.”
3. The Applicant faced an alternative charge of Indecent Act With An Adult Contrary To Section 11(a) Of The Sexual Offences Act 2006.
4. The Applicant entered a plea of ‘Not Guilty’ to both charges. The case was fully heard in the lower court. On 7<sup>th</sup> March 2001 Hon Okuche Principal Magistrate delivered a judgment in which he convicted the Applicant on the main charge of Rape.
5. Following conviction the court allowed the Applicant the opportunity to mitigate. Thereafter the applicant was sentenced to serve fifteen (15) years imprisonment.
6. The applicant now prays to have his sentence reviewed. The ODPP left the matter to the court to decide.



7. The Power of the High Court to review sentences 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.”

8. The orders which the High Court may make upon revision are provided by Section 364 of the Penal Code.

9. I have carefully perused the record of the proceedings before the lower court. I am satisfied that the correct procedure was followed in all aspects. The trial was conducted procedurally and the Applicant was accorded an opportunity to cross-examine all the witnesses.

10. I have considered the sentence which was imposed by the trial court.

The offence of Rape is a serious crime. The victim was a 70 year woman who had a mental disability all of which were aggravating factors. In the circumstances I find that the fifteen (15) year sentence imposed on the Applicant was appropriate and I will not interfere with the same.

11. 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.”

12. 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]

13. The provisions of section 333(2) of the Criminal Procedure Code were considered 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 19<sup>th</sup> June 2012.” [Own emphasis]

14. 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 in custody during the trial.”

15. I have carefully perused the record in the Lower Court. At the point of sentencing the trial court did take into account the mitigation of the Applicant. However the court did not consider and/or take into account the period of time which the applicant had spent in remand.

16. The Applicant was taken to court on 22<sup>nd</sup> May 2019. He was convicted on 24<sup>th</sup> March 2021. Therefore the applicant spent a period of twenty two (22) months in pre-trial detention. On the basis of Section 333(2) of the Penal Code, the Applicant is entitled to have this period deducted from his sentence. As such I direct that the fifteen (15) year sentence imposed upon the Applicant will run from 22<sup>nd</sup> May 2019. It is so ordered.

**DATED IN NYERI THIS 28<sup>TH</sup> DAY OF NOVEMBER 2025**

.....

**MAUREEN A. ODERO**

**JUDGE**

