



**Nderitu v Republic (Criminal Application E048 of 2025)
[2025] KEHC 17650 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17650 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL APPLICATION E048 OF 2025
MA ODERO, J
NOVEMBER 28, 2025**

BETWEEN

JACKSON NGARA NDERITU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Jackson Ngara Nderitu has filed an application dated 16th June 2025 seeking review of his sentence.
2. The Applicant had been charged in the High Court in Nyeri with the offence of murder contrary to section 203 as read with section 204 of the penal code.
3. The particulars of the charge were that:-

“On the 1st day of March 2014 at Gakanya Village Endarasha Location within Nyeri County murdered phillip irungu muturi.”
4. The trial was conducted in the trial court and on 30th April 2019 the trial court convicted the Applicant of the charge of Murder. The court thereafter sentenced him to serve twenty-five (25) years imprisonment. The Applicant now prays that the period which he spent in remand be deducted from his sentence in line with Section 333(2) of the Penal Code.
5. I note that the trial was conducted in the High Court. I have perused the ruling on sentencing delivered by Hon. Lady Justice Matheka on 28th June 2019. In that ruling the Hon. Judge stated that she had taken into consideration the period already spent in remand. However the judge did not indicate the date when the sentence was to commence.



6. 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 include the whole of the day of the date on which it was pronounced, except where otherwise provide 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]

It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.

7. 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 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]

8. Accordingly I do review the sentence imposed by the trial court and direct that the sentence imposed upon the Applicant is to run from the date plea was taken being 26th March 2014. It is so ordered.

DATED IN NYERI THIS 28TH DAY OF NOVEMBER 2025.

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MAUREEN A. ODERO

JUDGE

