

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT MISCELLANEOUS CRIMINAL APPLICATION

CASE NO. E024 OF 2025

PETER KARURI THEURI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant **PETER KARURI THEURI** has filed this application seeking to have the period spent in remand custody deducted from his sentence.
2. The Applicant had been charged in the Magistrates Court in Nyeri with the Offence of **ROBBERY WITH VIOLENCE CONTRARY TO SECTION 296(2) OF THE PENAL CODE** vide Nyeri **CMCR C No. E261 of 2022**.
3. The particulars of the charge were that;-

“On the 21st day of March 2022 at about 2215 hrs at KAHAWA ridge area along Nyeri-Nyahururu road in Nyeri Central Sub-County within Nyeri County while

armed with an offensive weapon namely panga you robbed **KENNEDY WACHIRA WAGURA** a mobile phone make **REDMI IMEI NO. 8605000669-12898** valued at **Kshs. 10,000/=**, the property of **KENNEDY WACHIRA WAGURA** and immediately before the time of the **ROBBERY** you threatened to use personal violence against the said **KENNEDY WACHIRA WAGURA.**”

4. The Applicant faced alternative charge of **HANDLING STOLEN GOODS CONTRARY TO SECTION 322(1) as read with SECTION 322(2) OF THE PENAL CODE.**
5. The Applicant entered a plea of **‘Not Guilty’** to both charges and his trial was conducted in the lower court on **13th March 2024.** **Hon. M. N. LUBIA Senior Resident Magistrate** delivered a judgment in which she convicted the Applicant of the main offence of Robbery with Violence.
6. Following his conviction the Applicant was granted an opportunity to mitigate. The trial magistrate then sentenced him to serve **ten (10) years** imprisonment without the option of a fine. The Applicant now prays that the period which he spent in remand custody be deducted from his sentence.

7. The **ODPP** opposed the application on grounds that the Applicant was held in remand not only for this offence but on account of several other pending cases.

8. 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.”

9. **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 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]

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

10. 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 19th June 2012.” [Own emphasis]

11. 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.”

12. The **ODPP** has objected to this application on grounds that the

Applicant was being held in remand due to several other pending cases. The details/citations of those several pending cases were not availed to this court.

13. In my view if the accused was in custody for other ‘**pending**’ cases

this would not be a reason to deny him his rights under **Section 333(2)** of the penal code. These rights would only be affected if it is shown/proved that the Applicant was in custody on account of previous **convictions**. The ODPP did not allege that the Applicant was in custody due to previous ‘**convictions**’.

14. I have perused the proceedings in the Lower Court file. In sentencing

the trial magistrate took into account the mitigation offered by the Applicant and the pre-sentence report. The trial court did also take into account the period of time the applicant

had spent in custody and ordered that the sentence of **ten (10) years** was to run from **1st April 2022**, the date when the Applicant took plea.

15. I find no merit in this application. The same is frivolous and amounts

to an abuse of court process. The application is dismissed in its entirety.

Dated in Nyeri this 28th day of November, 2025.

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MAUREEN A. ODERO
JUDGE