



REPUBLIC OF KENYA



KENYA LAW
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**Wambugu & 2 others (Criminal Revision E053 of 2025)
[2025] KEHC 17774 (KLR) (28 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17774 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E053 OF 2025
MA ODERO, J
NOVEMBER 28, 2025**

IN THE MATTER OF

YUNUS MOHAMED WAMBUGU 1ST APPLICANT

ROBERT NDERITU WANJIRU 2ND APPLICANT

AND

REPUBLIC PROSECUTION

RULING

1. The Applicant Yunus Mohamed Wambugu And Robert Nderitu Wanjiru each filed applications dated 11th February 2025 seeking to have the period which they spent in custody deducted from the final sentence imposed upon them.
2. Since the two applicants were charged together in the same file, their applications were consolidated and were heard together.
3. The Applicants with two (2) others were jointly charged in the Magistrates Court under File No. Nyeri CMCC E405/2022 with the offence of Trafficking In Narcotic Drugs Contrary To Section 4(a) (1) Of The Psychotropic Substances (control) Act, 2022.
4. The particulars of the charge were that

“On the 15th day of May 2022 at about 0530 hours at Majengo village in Nyeri central Sub-County within Nyeri County, you were jointly found manufacturing narcotic drugs namely cannabis to wit fifty (50) rolls and 20 grams of estimated market value Kshs. 1,400/= which was not in medical preparation form contrary to the law.”
5. The Applicants both pleaded ‘Not Guilty’ to the charge and their hearing was conducted in the lower court.



6. On 23rd January 2025 Hon. F Munyi, Senior Principal Magistrate delivered a judgment in which she convicted the Applicants of the charge of Trafficking. After hearing mitigation from the Applicants the two were each sentenced to serve four (4) years imprisonment.
7. The Applicants now pray that the period of time which they spent in remand custody prior to their sentence be deducted from their sentences.
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 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]

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. I have carefully perused the proceedings in the Lower court. I note that the learned trial magistrate did note that the Applicants had been in custody since May 2022. However there was no evidence that the trial court proportionally reduced this period when imposing sentence on the Applicants.

13. The record indicates that the applicants were arraigned in court on 16th May 2022. Judgment and sentence were delivered on 23rd January 2025 a period of 2 years 9 months. I therefore direct that the four (4) year sentence imposed on each applicant will run from the date of their arrest being 16th May 2022. It is so ordered.

DATED IN NYERI THIS 28TH OF NOVEMBER 2025

MAUREEN A. ODERO

JUDGE

