

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E085 OF 2025

PATRICK WANGAI GICHUHI.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. The Applicant **PATRICK WANGAI GICHUHI** has filed this application dated **7th May 2025** seeking to have the period which he spent in remand deducted from his sentence.
2. The Applicant had been charged at the Karatina Law Courts vide Criminal Case No. **E443 of 2024** on **Count No. 1 of THREATENING TO KILL CONTRARY TO SECTION 223(1) OF THE PENAL CODE**. The particulars of the charge were that:-

“On the 17th day of March 2021 at around 1900 hrs at Kianjugu Village in Mathira West Sub-County in Nyeri County without Lawful cause uttered words threatening to kill Brian Gichuhi by

saying ‘I want to kill Gichuhi’ while armed with a panga.”

3. The Applicant faced a second count of **MALICIOUS DAMAGE TO PROPERTY CONTRARY TO SECTION 339 (1) OF THE PENAL CODE.** The particulars of this charge were that

“On the 17th day of March 2024 at around 1900 hrs at Kianjugu village in Mathira West Sub-county of Nyeri County willfully and unlawfully damaged 16 2½ metre gauge iron sheets all valued at Kshs. 14,400/= the property of Brian Gichuhi.”

4. The Applicant entered a plea of **‘Not Guilty’** to both counts. His trial proceeded in the Lower Court. On **27th February 2025.** **Hon KANYIRI Principal Magistrate** delivered a judgment in which she convicted the Applicant on both counts.
5. The Applicant was allowed an opportunity to mitigate after which he was sentenced to serve **two years imprisonment**

on each count without the option of a fine. The Sentences were to run concurrently.

6. The applicant filed an application seeking review of sentence.

7. 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.”

8. **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.

9. 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 didn’t 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 sentences 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]

10. 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.”

11. I have carefully perused the record of proceedings in the Lower Court. I am satisfied that the trial was properly

conducted and the Applicant was allowed an opportunity to cross-examine all the witnesses. Upon conviction the Applicant was granted an opportunity to mitigate and a pre-sentence report was filed. The sentence imposed was lawful and was appropriate. I have no inclination to interfere with the same.

12. In sentencing the trial court did take note of the period of time the Applicant had spent in remand custody. The magistrate noted that

“The accused has been in custody from the date of arrest on the 28th of March 2024. The accused has spent 1 year and 11 days in custody.”

13. Despite this notice the court did not when imposing sentence direct that the sentence be reduced proportionally as required by the **Ahmed Abolfadhi Mohammed** case. In the premises this court directs that the two (2) year term of imprisonment imposed on the Applicant shall run from **2nd April 2024** being the date of plea. It is so ordered.

Dated in Nyeri this 5th day of December 2025.

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MAUREEN A. ODERO
JUDGE

ORIGINAL