

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NYERI

HIGH COURT CRIMINAL REVISION CASE NO. E143 OF 2025

ATANASIO MACHARIA MWANGI.....

.....APPLICANT

VERSUS

REPUBLIC.....

....RESPONDENT

RULING

1. The Applicant **ATANASIO MACHARIA MWANGI** has filed this Petition dated **27th August 2025**, seeking to have the period of time which he spent in remand deducted from his sentence.
2. The Applicant was arraigned at the **Karatina Law Courts** on a charge of **ARSON CONTRARY TO SECTION 332(a) OF THE PENAL CODE**. The particulars of the offence were that

“On the 15th day of November 2024 at Gathugu Village in Mathira East Sub-County of Nyeri County willfully and unlawfully set fire to a house the property of John Macharia.”

3. The Applicant faced a second count of **MALICIOUS DAMAGE TO PROPERTY CONTRARY TO SECTION 339(1) OF THE PENAL CODE**. The particulars of the charge were that
“On the 15th day of November 2024 at Gathigu Village in Mathira East Sub-County in Nyeri County willfully broke the window panes of the house, the property of John Mwangi Macharia.”
4. The applicant entered a plea of **‘Not Guilty’** to both counts. The trial was conducted in the Lower Court and vide a judgment delivered on **11th July 2025 Hon. KANYIRI Principal Magistrate** convicted the Applicant of Count No. 2.
5. The Applicant was given an opportunity to mitigate after which he was sentenced to serve **one (1) year** imprisonment without the option of a fine. The applicant now prays that the period of time which he spent in remand during his trial be deducted from his sentence.
6. The **ODPP** had no objection to the application.
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 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 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 spent 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 proceedings in the Lower Court.

At no

time did the trial court, mention or take into account the period of time the applicant had spent in remand. The trial did not put into consideration **Section 333(2)** at all.

12. The record indicates that the Applicant was arraigned in Court on **19th**

November 2024. As such I direct that his sentence of **one (1) year** in prison is to run from **19th November 2024.** It is so ordered.

Dated in Nyeri this 5th day of December 2025

.....
MAUREEN A. ODERO
JUDGE

ORIGINAL