



REPUBLIC OF KENYA



KENYA LAW
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**Maweu v Republic (Criminal Revision E023 of 2025)
[2025] KEHC 18390 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E023 OF 2025
FN MUCHEMI, J
DECEMBER 11, 2025**

BETWEEN

PAUL MAITHYA MAWEU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Brief Facts

1. The application for determination is dated 9th April 2025 whereby the applicant seeks for orders to a more lenient sentence and further pursuant to Section 333(2) of the Criminal Procedure Code.
2. The applicant was convicted by Ruiru Chief Magistrate in Criminal Case No. E2333 of 2024 with the offence of stealing by servant contrary to Section 281 of the Penal Code and was sentenced to four (4) years imprisonment.
3. The applicant states that the sentence is manifestly harsh and excessive considering he changed his plea to guilty and saved the court's time and resources. The applicant thus urges the court to review his sentence to a more lenient sentence to the time served so far. Further the applicant urges the court to review his sentence under Section 333(2) of the Criminal Procedure Code from the date of his arrest being 14th October 2024 which the trial magistrate did not take into consideration.
4. In opposition to the application, the respondent filed Grounds of Opposition dated 4th September 2025 and states that the applicant has not argued that the sentence passed was illegal or improper or that the trial court acted on wrong principles or omitted relevant factors or took into account irrelevant factors in sentencing or that the proceedings were irregular or in violation of his right or fundamental freedom. The respondent further states that the applicant has made generalized reasons which do not suffice interference with the discretion of the trial court in sentencing or warrant upsetting the sentence imposed by the trial court.



5. The respondent argues that the trial court considered the pre sentence report and found the applicant was not suitable to serve a non custodial sentence. As such, the respondent argues that the trial court considered the time spent in custody. It was further argued that both the mitigating and aggravating circumstances were considered but the aggravating circumstances outweighed the mitigating circumstances.
6. The respondent states that the offence which the applicant was found guilty is a felony which carries a sentence of not less than seven years and as such, his sentence ought not be reviewed.
7. Parties put in written submissions.

The Applicant's Submissions

8. The applicant submits that he is a first offender, remorseful and sole breadwinner of his family of three and mother who is over 80 years. The applicant further submits that he pleaded guilty to the offence thereby saving the court's time and resources but the trial court went ahead and sentenced him to four (4) years without an option of paying a fine. Furthermore, he submits that the court did not consider the time spent in custody and that the charge sheet indicated that he was arrested on 14/11/2024 whereas he was arrested a month earlier. To support his contentions, the applicant relies on the cases of Bethwel Wilson Kibor vs Republic [2009] eKLR; Mirera vs Republic (Criminal Revision E003 of 2024) [2024] KEHC 13908 (KLR) (31 October 2024) and Danson Busaka Saya vs Republic [2020] eKLR.

The Respondent's Submissions.

9. The respondent reiterates what she deponed in her affidavit.

The Law

10. This court is empowered by Article 165(6) of *the Constitution* of Kenya 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.
11. The applicant herein was convicted in Chief Magistrate Court in Ruiru in Criminal Case No. E2333 of 2024 with the offence of stealing by servant contrary to Section 281 of the Penal Code. The applicant changed his plea on 6th January 2025 and pleaded guilty and was sentenced to four (4) years imprisonment.
12. Article 50 of *the Constitution* prohibits review where a convict has gone through an appeal process. It provides:-
 - (2) Every accused person has the right to a fair trial, which includes the right:-
 - (q) If convicted, to appeal to, or apply for review by a higher court as prescribed by law.
13. In the instant matter the applicant has not appealed against the judgment of the trial court and thus the application for review is properly before the court.



14. Section 333(2) of the Criminal Procedure Code provides:-

“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 shall take account of the period spent in custody.”

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

16. The provisions of Section 333(2) of the Criminal Procedure Code was the subject of the decision in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018]eKLR where the Court of Appeal held that:-

“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 in custody 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 333(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 appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”

17. The same court in *Bethwel Wilson Kibor vs Republic* [2009]eKLR expressed itself as follows:-

“By proviso to section 333(2) of the Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account of the period spent in custody. Ombija J, who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody. The appellant told us that as at 22nd September 2009 he had been in custody for 10 years and one month. We think that all these incidents ought to have been taken into account in assessing sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”



18. According to The Judiciary Sentencing Policy Guidelines:

“The proviso to section 333(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.”

19. The applicant was arrested on 10th October 2024 and upon taking plea, the trial court granted him bond of Kshs. 3,500,000/- with one surety of similar amount. The applicant changed his plea to guilty and the trial court sentenced him on 12th February 2025. There is no evidence that the applicant was ever released on bond in the trial court. Thus from the record, the applicant spent four (4) months in custody. By virtue of Section 333(2) of the Criminal Procedure Code, this duration ought to have been considered during sentencing.

20. I have perused the court record and noted that during sentencing, the trial court took into account all the relevant factors. He was found unsuitable to serve a non-custodial sentence in the presentence report. As well as other relevant factors including the fact that he pleaded guilty saving valuable judicial time. The trial court then sentenced the applicant to four (4) years imprisonment under Section 281 of the Penal Code and directed that the sentence to run from the date of his arrest. Thus, it is clear that the trial court took into consideration the time spent in custody by the applicant.

21. The applicant has further sought review of his sentence to a more lenient sentence arguing that the sentence is manifestly harsh and excessive.

22. The penalty for the offence of stealing by servant has been provided in Section 281 of the Penal Code which indicates:-

If the offender is a clerk or servant, and the thing stolen is the property of his employer, or came into the possession of the offender on account of his employment, he is liable to imprisonment for seven years.

23. In the instant case, the trial court considered that the applicant pleaded guilty to the offence thereby saving judicial time and resources and the court said that the sentence called for was to be rehabilitative and deterrent. The amount stolen as per the charge sheet was Ksh.3,311,944 which was quite substantial. From the facts of the case, the magistrate said that the offence was well planned by the applicant who was an employee of the company. The complainant suffered financial loss due to the said theft, yet no order for restitution was made.

24. In my considered view, the sentence imposed was legal and reasonable in the circumstances and should not be reviewed.

25. I find this application not merited and hereby dismiss it accordingly.

26. It is hereby so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT THIKA THIS 11TH DAY OF DECEMBER 2025.

F. MUCHEMI

JUDGE

