

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT ISIOLO
CRIMINAL REVISION NUMBER E018 OF 2025

JAMES MWITI

BAARIUAPPLICANT

VERSUS

REPUBLICRESPONDENT

.....RESPONDENT

RULING

1. The Applicant's Application dated 19th July, 2025, seeks for review of sentence. He prays that the period he spent in custody while undergoing trial be considered and the computation of his sentence to commence from the date of arrest; which is 8th May 2018
2. He states that the time he spent in prison was not taken into consideration during sentencing as required under Section 333 (2) of the Criminal Procedure Code (CPC) and Article 27 (1) (4) and (5) of the Constitution
3. The application was not opposed.

Determination

4. The High Court jurisdiction on revision is set out under section 362 to 367 of the Criminal Procedure Code (CPC), and the mandate as set out under Section 362 of CPC, is to ascertain the **legality, correctness** or **propriety** of any order, sentence passed by the subordinate court, or proceedings.
5. A perusal of the record shows that the accused was arrested on 8th May 2018 and released on bond on 26th June 2018. Thus at the time of his release, he

had spent about a month in custody. He remained out on bond until he was arrested on 29th November 2018 for jumping bail. The court ordered for forfeiture of his bond, and in default to serve three months imprisonment. Thereafter he remained in custody until the conclusion of trial.

6. Section 333(2) of the Criminal Procedure Code (CPC) provides as follows:

“ Subject to the provisions of section 38 of the Penal Code (Cap. 63) 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.”

7. By dint of the above stated section of the CPC, the trial court was obliged to have taken into account the period the applicant had spent in custody. There is no evidence that such period was considered.

8. Ultimately the application succeeds. The period between 8th May 2018 to 26th June 2018, and 29th November 2018 to 17th September 2019, adds up to a total of 12 months spent in custody. This has to be discounted by the 3 months in lieu of forfeiture. Therefore, the Applicant's sentence ought to have been discounted by 9 months.

9. The Application is merited. The sentence of 10 years is hereby set aside and substituted with 9 years 3 months from the date of judgment at the trial court.

Dated , signed and delivered at Isiolo this 22nd day of January 2026.

S. Chirchir

Judge.

In the presence of :

Roba Katelo- court Assistant.

The Applicant

Mr. Manjale for the Respondent.

ORIGINAL