

4. **Section 333 (2)** of the Criminal Procedure Code provides thus:-

(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

5. In **Bethwel Wilson Kibor vs. Republic [2009] eKLR** it was held:

“By proviso to section 333(2) of Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take 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 ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence”.

6. I have perused the trial court’s record and I have established that in passing sentence, the trial court stated as follows: -

“I have considered the victim impact assessment report. I note the effect of the offence on the victim and the fact that accused is a first offender, he has been in custody since 25/02/2029 but he is not remorseful. Taking

this into consideration, I sentence the accused person to 15 years imprisonment.”

7. I have also noted that the Applicant was arrested on **22/2/2019** and arraigned in court for plea on **25/02/2019**. He pleaded not guilty and was admitted to bond of Kshs.200,000/= with surety of similar amount which he could not raise and was remanded in custody throughout the trial period.
8. The Applicant was convicted and sentenced on **8/3/2021**. He was thus in remand custody for about two (2) years and ten (10) days. The trial court despite observing the Applicant had been in custody since 25/02/2029 did not indicate whether it took into account that period when imposing the sentence.
9. Accordingly, this court finds that the trial court failed to interpret and apply the requirements under Section 333 (2) of the CPC during sentencing.
10. In the end, I find that the application dated 27th June 2024 to be merited and I will reduce the fifteen (15) years imprisonment period with two (2) years and ten (10) days period that the Applicant was in remand custody during the trial.

It is so ordered. This file is closed.

RULING WRITTEN, DATED & SIGNED AT MACHAKOS THIS 5TH FEBUARY 2026

**NOEL I. ADAGI
JUDGE**

DELIVERED VIRTUALLY ON TEAMS AT MACHAKOS THIS 5TH FEBUARY
2026

