

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

CRIMINAL REV. NO.E037 OF 2025

PETER MUTIE.....

APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

1. The Applicant has filed an undated application seeking that this court considers time spent in custody while awaiting his trial and reduce his sentence of 5 years imprisonment accordingly.
2. The application was supported by the affidavit of the applicant in which he depones that he was arrested on 21/10/2024 and arraigned in court on 28/10/2024 over a charge of arson contrary to section 332(a) of the Penal Code. That he was tried and on the 4/8/2025 he was sentenced to serve 5 years imprisonment. That the trial court did not consider the time spent in custody when it sentenced him. He is asking this court to consider the time spent in custody as required by Section 333(2) of the Criminal Procedure Code.
3. This court called for the lower court's file. I have perused the same and noted that the Applicant was arrested on

22/10/2024 and arraigned in court on 28/10/2024. He was sentenced on 4/8/2024 to serve 5 years imprisonment.

4. I have considered the application. Section 333(2) of the Criminal Procedure Code requires a court when sentencing an accused person who has been in custody during the trial to take into account the period spent in custody awaiting trial. The trial magistrate in this case did not say whether he had taken into account the time spent in custody when he sentenced the Applicant to serve 5 years imprisonment. The provisions of Section 333(2) are mandatory. It was therefore a misdirection on the part of the trial court to fail to take into account the period spent in custody when sentencing the applicant.
5. I have considered the Applicant was arrested on 22/10/2024 and was in custody until when he was sentenced on 4/8/25. This was a period of close to 10 months. The Applicant was entitled to have that period being taken into account when he was sentenced.
6. In view of the foregoing, I order that the sentence meted on the Applicant, Peter Mutie Mwanjala in Mpeketoni Principal Magistrate's Court commences from the date of his arrest i.e 22nd October 2024.

Delivered, dated and signed at GARSEN this 17th day of February 2026.

J. N. NJAGI
JUDGE

In the presence of:
Miss Ochola for Respondent

Appellant - Present in person at G.K. Prison Hindi

Court Assistant: Rahma

Original