



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

MISCELLANEOUS APPLICATION NO. E087 OF 2025

MICHAEL OGARO OBIYE.....

APPLICANT

-VERSUS-

REPUBLIC

RESPONDENT

RULING

1. The Applicant prays for invocation of the Provisions of **Section 333(2) of the Criminal Procedure Code** in his sentencing so that the period he was in remand custody awaiting trial is taken into account. He wants the custodial sentence imposed against him to commence from the date of his arrest. The Application is brought *vide* a Notice of Motion dated 30th May 2025 filed herein.
2. The Prosecution Counsel (Daniel Wakasyaka) does not oppose the Application.

3. The Applicant had been charged in the Chief Magistrate's Court at Molo (**Criminal Case No. E3042 of 2022**) for the offence of **attempted robbery with violence contrary to section 297(2) of the Penal Code**. It was alleged that on 10th December 2021 at Shalom area, Rongai Sub-County, within Nakuru County he and another attempted to rob one Duke Motanya of his motorcycle and Kenya Shillings 50,000/= in cash, and immediately before or immediately after the attempted robbery, used actual violence against the victim.
4. The Applicant and his co-accused denied the offence. After full trial the Applicant was convicted and sentenced to 25 years imprisonment. On appeal to this court *vide* **Criminal Appeal No. E058 of 2022**, my brother (H.K Chemitei Judge) reduced the sentence to 7 years imprisonment.
5. As to whether or not **Section 333 (2) of the Criminal Procedure Code** was complied with, the record of the lower court does not indicate so. This court has, however, reduced the sentence from 25 years to 7 years . I have no

jurisdiction to revise a decision of a court of concurrent jurisdiction.

6. The Application is therefore dismissed.

J. M. NANG'EA, JUDGE.

Ruling delivered this 10th day of February, 2026.

In the presence of:

Mr Wakasyaka for the DPP.

The Applicant.

The Court Assistant (Jeniffer).

J. M. NANG'EA, JUDGE.