



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI
CRIMINAL DIVISION
HIGH COURT CRIMINAL REVISION E049 OF 2025

REPUBLIC

.....**PROSECUTION**

VERSUS

GIPSON MUDACHI NYEBERAACCUSED

REVISION

INFORMATION

1. The Accused Person **Gibson Mudachi Nyabera** was charged with the offence of acquiring of uncustomed goods contrary to Section 200(d)(iii) as read with Section 21(c) of East African Community Custom Management Act 2004
2. Particulars of the offence being that on the 16th September 2015 at unknown place within the Republic of Kenya acquired uncustomed good to wit one unit of used Toyota Land Cruiser Chassis

number JTEBZ29J700014107 with duty amounting to Ksh.642,000/-which he knew was to be paid to Commissioner Customs of Kenya Revenue Authority.

3. On 26/7/2017 he was released on bond of Ksh. 500,000/- plus one similar surety or alternative of cash Bail of Ksh. 300,000/-

4. On 7/2/2025 after trial judgment was delivered and sentencing the accused person was sentenced as follows:-

Count I - Ksh 321,000-/ in default 1 year imprisonment

Count II - Ksh 321,000/- in default 1 year imprisonment

The sentence was to run consecutively.

5. **On 12/2/2025 Hon. Ben Mark Ekhubi (SPM)** ordered as follows;_

1. The Ruling of the forfeiture

2. The Incharge Industrial Area to compute the days the accused was remanded in the facility pre-conviction.

6. **Lawrence Ojwang (SP) officer in-charge Nairobi remand** informed the court through a letter dated 13/2/2025 that the accused person

spent 2 months and 30 days in remand facility prior to his conviction.

CLARIFICTION ON INMATE GIBSON MUDASIA NYABIERA

7. On 14/2/2025 the following information was provided by **Simon Chege (SP) In-charge of documentation office Nairobi West Prison** regarding the period in custody of inmate Gibson Mudasia Nyabiera

Details:

Full Name: Gibson Modasia Nyabiera

- Prison Number NWP/1475/022/LS (while serving sentence), NWP 442/023/ or (while in Remand custody).
- Date of Admission: 09/06/2022
- Reason for Admission. Conviction in Case No. 1323/2017

Period in Custody

- Inmate was in custody from 09/06/2022 to 13/02/2023, serving a 1-year sentence.
- Upon completion of the sentence on 13/02/2023, he was readmitted to remand custody due an ongoing case (Case No. 1324/2017).
- He remained in remand custody until his release on bond on 22/2/2023 case

Release Details

- Date of release. 22/2/2023
- Mode of Release: Released on bond from remand custody
- Period spent in remand custody 9 days.

On 24th May 2025 the Applicant filed Notice of Motion seeking the following orders :-

1. THAT, the Court may call for the Lower Court Record in **Case No. E1324 of 2017** from the MILIMANI Law Court No.11 for purposes of reviewing the sentencing record for compliance with **Section 333(2) of the Criminal Procedure Code** and the **Judiciary Sentencing Policy Guidelines of Kenya (2023)**.
2. THAT, the court invoke its judicial power and revise sentence of two years imprisonment in tow courts to ran concurrently.

APPLICANT'S SUPPORTING AFFIDAVIT

1. THAT, he spent one month in Remand custody during the trial process in between judgment and sentencing, and the trial magistrate did not take into account this period when passing the sentence.
2. THAT, the Court be pleased and consider the time he spent in remand custody before sentencing and

review the sentence of one year's imprisonment in two counts (2) imposed on me on the 27th day of February 2025 to run concurrently from the day of arrest.

ANALYSIS & DETERMINATION

The Applicant applied for revision with regard to sentence specifically on computation of sentence under **Section 333 (2) Criminal Procedure Code.**

In the case of **Ahamad Abolfadhi Mohammed & Another vs Republic, 2018 eKLR** the Court of Appeal held that:

***'The failure of the Court to take into account the meaningful way, the period that the appellants had spent in custody as required by Section 333(2).'* Section 333(2) of the Criminal Procedure Code states that: 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 for in the Code. Provided that where the person sentenced under subsection (1) has, before such sentence, been held in custody, the sentence shall take account of the period spent in custody.**

The accused person is entitled to a fair trial as outlined in **Article 50 (2) of the 2010 Constitution of Kenya**, which means that the sentence that he is to be given ought to reflect the current position of the law as stipulated in the statutes and the Constitution of Kenya. Thus, the accused person is eligible for the review of his sentence to have the time spent in custody during the trial reflected in the computation of his sentence.

The Trial Court record confirms that the Trial Court after sentence conducted forfeiture proceedings and sought a report from Prison on the Accused person/Applicant Pre-trial custody period. The Trial Court record confirms 2 Reports from Nairobi West Prison & Nairobi Prison and claimed the Applicant stayed in custody Pre-Trial 2 months and 30 days which the Trial Court ordered to be factored in while computation of sentence is done by Prison Authorities as mandated under the Prisons Act. From the Trial Court record Section 333(2) CPC was complied with.

The ODPP conceded the revision in terms of Section 333 (2) CPC after perusing the Trial Court file and the date of arrest/arraignment 26/7/2017.

The Accused was granted bail/bond on the same date and attended the hearing until judgment where he was convicted and awaited sentence.

The Court considered that this was one of the matters slated for Prison Decongestion flagged by Hon Chief Justice and Through Principal Judge of the High Court, that all High Courts were to undertake decongestion on suitable cases as per the law, misdemeanors cases whose sentence is less than 3 years and partly served; if the Applicant is of good conduct then the High Court would exercise discretion on various non custodial sentences prescribed under Section 24 of the Penal Code. This is such a case.

DISPOSITION

- a. The Prisons Department shall come the balance of sentence to be served by the Applicant in conformity with Trial court record.**
- b. The Probation/CSO Officer to prepare/present Resentencing Report to aid the Court on Way forward.**

**c. The ODPP may file
pleading/comment/submission to the
matter.**

d. Further Mention on 23/2/2026.

**RULING DELIVERED DATED & SIGNED IN OPEN
COURT CRIMINAL DIVISION HIGH COURT AT
NAIROBI ON 10/2/2026.**

M.W.MUIGAI

JUDGE