

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT NYAHURURU**

**CRIMINAL APPLICATION NO. E036 OF 2025**

**REPUBLIC.....ODPP**

**VERSUS**

**PETER MAINA NDERITU.....ACCUSED**

**RULING**

**1.** In an undated application, the Applicant seeks computation of the period he spent in custody pursuant to **Section 333(2) of the Criminal Procedure Code**, a provision of the law which provides thus;

***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.***

**2.** Secondly, the Applicant’s prayer is to be granted probation orders.

3. The application is premised on grounds that the Applicant was charged and convicted for the offence of **Robbery with Violence contrary to Section 296(2) of the Penal Code** and sentenced to suffer death, a sentence that the High Court substituted with a sentence of 25 years imprisonment.
4. The order was made by Wendoh J. when the sentence was reviewed and substituted, the power to determine the question of sentence by this court which is of a concurrent jurisdiction was exhausted. Therefore, this court cannot reconsider the sentence. Doing so will be re-opening its own decision which is restricted by the principle of *functus officio*.
5. In the upshot, the application lacks merit. Accordingly, it is dismissed.
6. It is so ordered.

**Dated, signed and delivered virtually this 5<sup>th</sup> day of February, 2026.**

.....  
**L.N. MUTENDE**  
**JUDGE**