



**Lopeyok v Republic (Criminal Revision E002 of 2026)
[2026] KEHC 3006 (KLR) (9 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAPENGURIA
CRIMINAL REVISION E002 OF 2026
RPV WENDOH, J
MARCH 9, 2026**

BETWEEN

FRANCIS LOPEYOK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Francis Lopeyek was convicted for the offence of committing an Indecent Act with an imbecile person contrary to section 146 (1) of the Penal Code. He was sentenced to serve eight (8) years imprisonment on 31/10/2024. The applicant has filed an application seeking that the court do review this sentence by factoring in his sentence the time that he spent in remand
2. The prosecution Counsel observed that the application is made pursuant to section 333 (2) of the Criminal Procedure Code and she did not oppose it. Section 333(2) of the Criminal Procedure Code Provides as follows;

“(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”.

3. In the case of Ahmed Abdolfathi Mohammed & Another -Vs- Republic (2018) KECA, the Court of Appeal said as follows of Section 333(2) of the Criminal Procedure Code “The appellants have been in custody from the date of their arrest on 19th June, 2012. By dint of section 333(2) of the CPC., the court was obliged to take into account the period that they spent in custody before they were sentenced Taking into account the period spent in custody must mean considering that period so that the



imposed sentence is reduced proportionately by the period already spent in custody; It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentences to run from the date of conviction because that amounts to ignoring all together the period already spent in custody and still it must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court the power to include the period already spent in custody in the sentence that it metes out to the Accused person.....”

4. From a reading of Section 333(2) of the Criminal Procedure Code and the above decision of the Court of Appeal, the sentencing court must take into account the period that an accused person has spent in remand at the time of sentence.
5. In this case, the applicant was in remand from 28/8/2023 when he was arraigned before the court till 31/10/2024 when he was sentenced. The trial court did not take into consideration the over one year that the applicant was in custody during his trial. I therefore allow the application, and review the sentence and direct that the sentence of eight (8) years do commence on 23/8/2023.

It is so ordered.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KAPENGURIA THIS 9TH DAY OF MARCH, 2026.

R. WENDOH

JUDGE

In the Presence of:-

Appellant – in person

Ms. Koech - Prosecution Counsel

Juma/ Hellen Court Assistants

