



REPUBLIC OF KENYA



KENYA LAW
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**Kiwaru v Republic (Criminal Revision E002 of 2026)
[2026] KEHC 2716 (KLR) (24 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2716 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E002 OF 2026
TW CHERERE, J
FEBRUARY 24, 2026**

BETWEEN

BENARD Omayo Kiwaru APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is the Notice of Motion dated 12th January 2026 brought pursuant to section 333(2) of the Criminal Procedure Code. The Applicant seeks that the period spent in remand custody prior to conviction be taken into account in computing his sentence.
2. The Applicant was charged, tried and convicted in Nyamira MCSO 80 of 2019 for the offence of defilement and sentenced to twenty (20) years imprisonment.
3. It is not disputed that the Applicant was arrested on 29th September 2019 and remained in custody until 16th December 2021 when he was convicted and sentenced.
4. Section 333(2) of the Criminal Procedure Code provides:

“Subject to the provisions of Section 38 of the Penal Code, where a person is sentenced to imprisonment for an offence, any period during which he was held in custody in connection with that offence shall be taken into account in imposing the term of imprisonment.”
5. The Court of Appeal has repeatedly affirmed that sentencing courts are under a mandatory duty to credit pre-sentence custody. In *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR, the Court held that failure to consider the remand period amounts to an error warranting correction.
6. The sole issue for determination is whether the period spent in pre-trial custody ought to be reckoned in computing the sentence pursuant to section 333(2) of the Criminal Procedure Code.



7. The period between 29th September 2019 and 16th December 2021 amounts to approximately two (2) years and two (2) months. There is no indication on record that this period was expressly considered at the time of sentencing. Failure to credit time spent in remand custody results in a sentence that is effectively longer than that imposed by the court. This Court is therefore obligated to give full effect to section 333(2) of the Criminal Procedure Code.
8. In the premises, the application is merited and it is hereby ordered:
 1. The sentence of twenty (20) years imprisonment imposed in Nyamira MCSO No. 80 of 2019 shall run from 29th September 2019, being the date of arrest.
 2. The Officer in Charge of the relevant correctional facility shall compute the sentence accordingly.

DELIVERED AT NYAMIRA THIS 24TH DAY OF FEBRUARY 2026

WAMAE.T. W. CHERERE

JUDGE

Appearances

Court Assistant - Hilda

Applicant - Present

For the DPP - Ms. Kiptanui

