



REPUBLIC OF KENYA



KENYA LAW
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**Magutu v Republic (Criminal Revision E003 of 2026)
[2026] KEHC 2843 (KLR) (24 February 2026) (Ruling)**

Neutral citation: [2026] KEHC 2843 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL REVISION E003 OF 2026
TW CHERERE, J
FEBRUARY 24, 2026**

BETWEEN

LAMECK ONDERI MAGUTU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant has moved this Court under section 333(2) of the *Criminal Procedure Code* seeking that the period spent in remand custody prior to conviction be taken into account in computing his sentence.
2. The record shows that the Applicant was arrested on 13th August 2023, charged in Keroka PM’s Court MCSO 070 of 2023, and subsequently convicted and sentenced to a 10-year custodial term.
3. 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.”
4. The Court of Appeal has repeatedly affirmed that sentencing courts are under a mandatory duty to credit pre-sentence custody. In *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR, the Court held that failure to consider the remand period amounts to an error warranting correction.
5. The duty imposed by section 333(2) is therefore not discretionary. A court must expressly take into account the period an accused person spent in custody before sentence.



6. In the present case, there is no indication on record the period Applicant spent in custody was expressly taken into account when sentence was pronounced. Failure to credit the remand period would result in the Applicant serving a term longer than that lawfully intended.
7. It is hereby ordered that:
 1. The sentence of 10 years imposed in Keroka MCSO 070 of 2023 shall run from 13th August 2023, being the date of Applicant's 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.

