



**REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYAMIRA
(CHERERE-J)
HCCRCMISC E052 OF 2025**

BETWEEN

**JACOB NYABUTI MISIRI.....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 allegedly spent in remand custody be taken into account in computing his sentence.
2. The record shows that the Applicant was arrested on 05th May 2023 and charged in Nyamira CMSO E020 of 2023.
3. He was released on bond on 07th September 2023 but he absconded court. He was re-arrested and arraigned before the trial court on 03rd April 2024, and remained in custody until he was sentenced on 29th January 2025.
4. Section 333(2) of the Criminal Procedure Code requires a sentencing court to take into account the period during which an accused person was held in custody in connection with the offence prior to sentence. The object of the provision is to ensure fairness in sentencing and prevent an accused person from serving a term longer than that imposed by the court.

5. The right to bail is constitutionally protected. However, it is a right that carries corresponding obligations. An accused person released on bond is under a duty to attend court as required and to submit to the jurisdiction of the court.
6. In the present case, the Applicant was granted bond and subsequently absconded. By jumping bond, he abused the privilege extended to him. This Court is not persuaded that a person who deliberately absconds should be permitted to benefit from the consequences of his own misconduct. The period of custody following re-arrest was directly occasioned by his decision to evade trial.
7. For that reason, although the Applicant was in custody from 03rd April 2024 to 29th January 2025, that period shall not be reckoned for purposes of section 333(2) of the Criminal Procedure Code, as it arose from his abuse of the right to bail.
8. It is hereby ordered that only the period from 05th May 2023 to 07th September 2023 shall be taken into account in computing the Applicant's sentence pursuant to section 333(2) of the Criminal Procedure Code.

**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