

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

CRIMINAL MISC APPLICATION NO. E010 OF 2025

GEORGE KURIA KIMANI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. For determination before the court is the undated **Chamber Summons application** in which the Applicant, **George Kuria Kimani** seeks the following orders:-

- a) THAT the Honourable Court be pleased and consider Section 333 (2) of the Criminal Procedure Code and reprove time served in duration of case (pre-trial) in remand by the Applicant therein.*
- b) THAT the Honourable Court to be pleased and order the sentence imposed the applicant to commence from the date of plea taking which was April, 2023.*
- c) THAT failing to consider that the case proceeded , time spent will violate the right of the Applicant herein since he has been in custody ever since plea taking to sentencing.*

2. The Application is based on the grounds as set out on its face and his Supporting Affidavit. According to the Applicant, he was charged, convicted and sentenced to four (4) years imprisonment for the offence of **Possession of Narcotic Drugs contrary to Section (3) (2) (a) of the Narcotic Drugs and Psychotropic Substances (Control) Act, 1994 in Githunguri SPM Cr. Case No.E466 of 2023, Republic –vs- George Kuria Kimani.** It is his contention that he spent seventeen (17) months in custody while awaiting the resolution of the said matter and he urges the court to be guided by the case of **AHAMAD ABOLFADHI MOHAMMED & Anor –vs- Republic [2018] eKLR** and grant the prayer he seeks as it has jurisdiction to grant the same. The prosecution’s counsel submitted that she is not opposed to the application.
3. The court called for the original Record of Proceedings from **Githunguri being file in respect of Criminal Case No. E466 OF 2023** for consideration and determination of the application herein.

Determination

4. From the prayers sought by the Applicant. It is clear he is seeking for review of the sentence that was meted against him and urging that the court invokes

the provision under **Section 333 (2) of the Criminal Procedure Code** by considering the period he spent in while awaiting the resolution of the case against him before the trial Court.

5. The power to determine an application of this nature in criminal cases lies in the supervisory jurisdiction of the High Court which is provided for under **Article 165(6) of the Constitution of Kenya** to review a decision by a subordinate court.

“The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court”.

6. Further, **Article 50(2) of the Constitution** guarantees an accused person the right to fair trial as follows:-

(2) Every accused person has the right to a fair trial, which includes the right—

(a) to be presumed innocent until the contrary is proved;

(b) to be informed of the charge, with sufficient detail to answer it;

(c) to have adequate time and facilities to prepare a defence;

(d) to a public trial before a court established under this Constitution;

- (e) to have the trial begin and conclude without unreasonable delay;*
- (f) to be present when being tried, unless the conduct of the accused person makes it impossible for the trial to proceed;*
- (g) to choose, and be represented by, an advocate, and to be informed of this right promptly;*
- (h) to have an advocate assigned to the accused person by the State and at State expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*
- (i) to remain silent, and not to testify during the proceedings;*
- (j) to be informed in advance of the evidence the prosecution intends to rely on, and to have reasonable access to that evidence;*
- (k) to adduce and challenge evidence;*
- (l) to refuse to give self-incriminating evidence;*
 - (m) to have the assistance of an interpreter without payment if the accused person cannot understand the language used at the trial;*
- (n) not to be convicted for an act or omission that at the time it was committed or omitted was not—*
 - (i) an offence in Kenya; or*
 - (ii) a crime under international law;*
- (o) not to be tried for an offence in respect of an act or omission for which the accused person has previously been either acquitted or convicted;*
- (p) to the benefit of the least severe of the prescribed punishments for an offence, if the prescribed punishment for the offence has been changed between the time that the offence was committed and the time of sentencing; and*
- (q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.*

7. The revisional jurisdiction in criminal cases is provided for under **Sections 362 to 366** of the **Criminal Procedure Code**. **Section 362** provides that:-

[362]. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”

8. **Section 364** goes on to state as follows:-

[364]. Powers of High Court on revision (1) In the case of a proceeding in a subordinate court the record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may—

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”

9. In the case of Samwel Kamau Macharia & Another –vs- Kenya Commercial Bank Ltd & 2 Others, Application No.2 of 2006, the Supreme Court of Kenya held that:-

“A court’s jurisdiction flows from either the Constitution or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate itself jurisdiction exceeding that which is conferred upon it by the law”.

10. In this case, a reading of the original record of proceedings in **Githunguri SPM Cr. Case No.E466 o 2023** shows that indeed the Applicant was arraigned in court on 26th April, 2023 whereby he pleaded ‘Not Guilty’ to the offence of being found in possession of **Narcotic Drugs contrary to Section 3(2) of the Narcotic and Psychotropic Substances Control Act.** The Applicant was then released on cash bail on 11th October, 2023. And on 17th July, 2024, he entered a Plea Bargain agreement whereby he pleaded ‘Guilty’ to the said offence. The court entered a ‘Plea of Guilt’ for the Applicant and proceeded to sentence him to four (4) years imprisonment for the said offence. In its ruling on sentence, the court indicated that the sentence was to run from 26th April, 2023 when the Applicant was arrested.

11. The Applicant urged this Court to consider **Section 333(2) of the Criminal Procedure Code** and repleve the time he served in remand in the duration of the case. **Section 333(2)** provides as follows: -

“Subject to the provisions of Section 38 of the Penal Code, 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 Sub section

(1) has prior, to such sentence shall take account of the period spent in custody.”

12. According to **The Judiciary Sentencing Policy Guidelines:-**

“The proviso to Section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

13. Having established that the trial Court in its ruling on sentence the Applicant indicated that the sentence was to run from the time that the accused was arrested, and arraigned in court, which was 26th April, 2023 to the date of the said ruling, it is clear that the period he spent in custody was factored in the sentence that was meted against him in compliance with the provisions of **Section 333(2) of the Criminal Procedure Code**, albeit the period he was out on cash bail. This being the case, the court finds there is no need to interfere with the sentence that was meted by the trial Court as the same was correct, legal and appropriate.

14.. The upshot is that the undated Chamber Summons application lacks merit and the same is hereby dismissed.

It is so ordered.

RULING DELIVERED VIRTUALLY, DATED AND SIGNED AT KIAMBU
THIS 9TH DAY OF APRIL, 2025.

D. O. CHEPKWONY
JUDGE

In the presence of:

Applicant in person – present

Court Assistant - Martin