

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAKURU
CRIMINAL REVISION NO. E022 OF 2025

(From Original Cr Case No. 3097 Of 2016 Magistrates Court at Molo)

PATRICK MUNYAO ISEMBE..... APPLICANT

VERSUS

REPUBLIC..... RESPONDENT

RULING

1. Before this Court is the Applicant's Notice of Motion dated 24th February 2025, seeking the following Orders:
 - 1) *The court be pleased to certify this matter urgent.*
 - 2) *The Honourable Court be pleased to take into account the period he served in remand pending trial.*
 - 3) *The Applicant be exempted from paying costs as he is a pauper.*
2. The application is premised on the grounds set out on its face and is supported by the affidavit of the Applicant, sworn on the even date. The Applicant depones that he was charged, convicted, and sentenced to ten (10) years' imprisonment for the offence of robbery with violence contrary to section 296(2) of the Penal Code, in Molo Magistrate's Court Criminal Case No. 3097 of 2016.
3. He avers that he took plea on 17th November 2016 and remained in custody until the year 2018, when he was released on bond pending the hearing and determination of his case. He contends that he was in remand custody for approximately one (1) year and five (5) months, a period which the trial court failed to take into account when imposing sentence.
4. The Respondent filed a Replying Affidavit sworn on 23rd June 2025 by learned Prosecution Counsel, James Kihara. Counsel confirming the factual background, namely that the Applicant was charged, convicted, and sentenced

to ten (10) years' imprisonment for the offence of robbery with violence, having taken plea on 17th November 2016.

5. He urged this Court to verify the period allegedly spent by the Applicant in remand custody before making any appropriate orders. Otherwise, he indicated he has no objection to the consideration of such period in the computation of the Applicant's sentence.

Analysis and determination

6. After considering the application and the affidavits both in support and opposition of the Application, the only issue for determination herein is whether this Court has power to review the sentencing putting into consideration the provisions of section 333 of the CPC.
7. Section 333 of the Criminal Procedure Code provides that:-

“(1) A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death. (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.”
8. The powers of the Court under section 333 (2) of the Criminal Procedure Code and the proviso thereto were explained in the Court of Appeal in the case of **Ahamad Abolfathi Mohammed & another v Republic [2018] KECA 855 (KLR)** where the Court of Appeal held that:-

“.....The second is the failure by the Court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code...By dint of section 333(2) of the Criminal Procedure Code, the Court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial Court. With respect, there is no evidence that the Court took into account the period already spent by the appellants in custody. “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 sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the provision to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the Court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate Court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”

9. The High Court’s criminal revision jurisdiction is donated to it by Sections 362 to 366 of the Criminal Procedure Code. The Court can only review the judgment of a subordinate Court under Section 364 which provides for powers of High Court on revision as follows:

“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”

10. In accordance with the provisions of Section 364 of the law, a review is applicable only to decisions made by subordinate courts such as this one.
11. In the present case, the Applicant was arraigned before the court on 18th November 2016, when he took plea and denied the charge. He remained in custody until 12th February 2018, when he was admitted to bond in the sum of Kshs. 200,000. Thereafter, he attended trial while on bond until judgment was delivered on 24th February 2020, whereupon he was sentenced to ten (10) years’ imprisonment. The record thus shows that the Applicant was in remand custody for a period of fourteen (14) months and twenty-five (25) days.
12. It is evident that the trial court did not take into account the said period when computing the sentence imposed, notwithstanding the mandatory provisions of section 333(2) of the Criminal Procedure Code, which obligate a sentencing court to factor in the time spent in custody.
13. Accordingly, this Court finds merit in the application and hereby directs that the period the Applicant spent in remand custody, being from 18th November 2016 to 12th February 2018, amounting to fourteen (14) months and twenty-five (25) days, shall be taken into account in computing the Applicant’s term of imprisonment.

Dated, signed and delivered at Nakuru this 14th Day of April, 2026.

**PATRICIA GICHOHI
JUDGE**

In the presence of:

Patrick Munyao Isembe - Applicant

Ms Bosire for Respondent

ORIGINAL