

**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NYERI**

**HIGH COURT CRIMINAL REVISION CASE NO. E137 OF 2025**

**JACKSON MAINA NDERITU.....**

**.....APPLICANT**

**VERSUS**

**REPULIC.....RESPONDENT**

**RULING**

1. The Applicant herein **JACKSON MAINA NDEIRTU** has filed an application seeking to have the period of time which he spent in pre-trial detention factored into his sentence.
2. The Applicant had been arraigned in the Lower Court on **22<sup>nd</sup> July 2021** facing a charge of **ASSAULT CAUSING GREVIOUS BODILY HARM CONTRARY TO SECTION 234 OF THE PENAL CODE**. The particulars of the charge were that

**“On the 23<sup>rd</sup> day of May 2021 at Ragati Village in Ragati Location, Mathira East Sub-county within Nyeri County unlawfully did grievous harm to SUSAN**

**MURINGU by stabbing her on her right hand using a kitchen knife.”**

3. The Applicant entered a plea of Not Guilty to the charge and his trial commenced on **20<sup>th</sup> September 2021**. On **7<sup>th</sup> April 2025 HON KANYIRI Principal Magistrate** delivered a judgment in which she convicted the Applicant of the offence of Assault causing grievous bodily harm.
4. The Applicant was then allowed an opportunity to mitigate after which the court sentenced him to serve **fifteen (15) years** imprisonment. The Applicant now prays to have the period which he spent in remand custody deducted from his sentence.
5. The court is empowered by **Article 165 (6)** of the **Constitution of Kenya 2010** to review a decision by a subordinate court. **Article 165 (6)** provide as follows:-

**“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. **Section 333(2)** of the **Penal Code Cap 63** Laws of Kenya provides as follows;-

**“Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from and 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, been held in custody, the sentence shall take account of the period spent in custody.”**

**[Own emphasis]**

It is clear from the above proviso that the law requires courts to take into account the period the convict spent in custody.

7. The provisions of **section 333(2)** of the Criminal Procedure Code were considered in this case of **AHAMAD ABOLFADHI MOHAMMED & Another vs REPUBLIC [2018] eKLR** where the Court of Appeal held as follows:-

**“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 appellant 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 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 proviso

**to section 332 (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 appellant's sentence of imprisonment to run from the date of their arrest on 19<sup>th</sup> June 2012." [Own emphasis]**

8. The ***Judiciary Sentencing Policy Guidelines clauses 7:10 and 7:11*** provide that:

**"The proviso to section 332(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.”**

9. I have perused the Sentencing Ruling delivered by the trial court on **9<sup>th</sup> July 2025**. Although the learned trial magistrate did note that the Applicant had been in custody for **3 years 1 month and 15 days**, the court did not specifically direct that his sentence be reduced proportionately. As such I find that the trial court failed to comply fully with **Section 333(2)** of the **Criminal Procedure Code**.

10. The record indicates that the Applicant was arrested on **22<sup>nd</sup> July 2021**. He remained in custody for the duration of the trial. In the premises I allow this application and hereby direct that the fifteen (15) year sentence imposed upon the Applicant will run from **22<sup>nd</sup> July 2021**. It is so ordered.

**Dated in Nyeri this 17<sup>th</sup> day of April, 2026**

.....  
**MAUREEN A. ODERO**  
**JUDGE**

ORIGINAL