



**Kiambi & another v Republic (Criminal Application
E051 of 2025) [2026] KECA 793 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KECA 793 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPLICATION E051 OF 2025
S OLE KANTAI, M NGUGI & KATWA KIGEN, JJA
APRIL 24, 2026**

BETWEEN

GEORGE MWIRIGI KIAMBI 1ST APPELLANT

JAPHET MUTEMBEI FRANCIS 2ND APPELLANT

AND

REPUBLIC RESPONDENT

(Being an application under sub rule (1) and (2) of the Court of Appeal rules in the matter of clarification of the effective commencement date of the 40 years sentence imposed on the applicants by the Court of Appeal at Nyeri (Karanja, J. Mohammed & Muchelule JJA) in its judgment delivered on 31st July, 2025 originating in Criminal Appeal No. 5 & 6 of 2019)

RULING

1. The appellants herein filed Notice of Motion dated 13th October, 2025 seeking clarification as to when their sentence of 40 years imprisonment issued by this Court (Karanja, J. Mohammed, & Muchelule, JJA.) on 31st July 2025 in Criminal Appeal Nos. 5 & 6 of 2019 ought to commence.
2. The application is supported by the grounds on the face of it and in the appellants' separate supporting affidavits both sworn on 16th October, 2025 although they raise similar grounds. The grounds are that the appellants with 4 others were initially charged in the High Court at Meru in Criminal Case No. 34 of 2008 for the offence of murder contrary to section 203 as read with section 204 of the Penal Code and upon being found guilty, they were sentenced to death. Aggrieved and dissatisfied with the said judgment, the appellants filed separate appeals to this Court to wit, Criminal Appeal No. 5 & 6 of 2019. By the judgment of this court delivered on 31st July 2025, the appeal against their conviction was dismissed and only succeeded on sentence and consequently, the death sentence was substituted by an imprisonment term of 40 years for each of the appellants. However, this Court did not indicate when the substituted sentence should commence.



3. At the hearing hereof, the appellants were present in person from prison while Counsel Miss. Gacheru appeared for the respondent. The appellants in their oral submissions submitted that they wished to get a clarification on when their sentence of 40 years imprisonment should begin noting that this Court in its judgment failed to give an indication on the same. On her part, Ms. Gacheru confirmed that to be the position. She further, on request by the Court, noted that the appellants have been in custody for a period of 10 years from the time they were first arraigned in Court on 12th May 2008, throughout the trial, to 5th July 2018 when the death sentence was imposed at the High Court.
4. We have perused the judgment of this Court of 31st July 2025 and note that at paragraph 33 thereof, the appellants had asked this Court to take into consideration the time they have spent in prison and reduce the sentence imposed against them. Although the Court substituted their death sentences with an imprisonment term of 40 years for each of the appellants, the record does not reflect that this Court gave an indication of when the sentence of 40 years imprisonment was to commence.
5. Section 333 (2) of the Criminal Procedure dictates as follows;
 - (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 when otherwise provided in this Code.

Provided that when 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.”
6. The Sentencing Policy Guidelines, 2023 provides as follows;
 - “2.3.18 Section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offence that involve minimum sentence as well as where an accused person has spent time in custody because he or she could not meet the terms of bail and bond.
 - 2.3.19. Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders – for example, there may be period served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.
 - 2.3.20. An offender convicted of a misdemeanor and who had been in custody throughout the trial for a period equal to or exceeding the maximum term of imprisonment provided for that offence, should be deemed to have served their sentence and be released immediately.”



7. This Court in *Nyongesa vs. Republic* [2026] KECA 180 (KLR) stated thus regarding sentencing:

“Lastly, on the issue of sentence, the appellant was sentenced to 25 years’ imprisonment. The record shows that although counsel informed the court during mitigation that the appellant had been in custody since December 2014, the trial court did not factor in that period as required by section 333(2) of the Criminal Procedure Code. The appellant was first presented in court on 22nd December 2014 and, being unable to meet bail terms, remained in custody throughout the trial. We are therefore inclined to interfere with the sentence only to the extent of giving credit for the time already served. In our view, the trial court misdirected itself on this issue and should have directed that the appellant’s sentence runs from the date of his first arraignment, to wit, 22nd December 2014.”

8. Similarly, in the case of *Ayako vs. Republic* (2023) KECA 1563 (KLR) this Court held that:

“...The record shows that the appellant was in custody since he was arraigned in court on July 18, 2011. By dint of section 333(2) of the Criminal Procedure Code, the imprisonment term of 30 years shall be computed to begin running from that date.”

9. Miss. Gacheru confirmed that the appellants have been in custody since they were first arraigned in Court on 12th May, 2008. We also have had the opportunity to peruse the proceedings of the High Court and confirmed the same. Guided by section 333(2) of the Criminal Procedure Code, Sentencing Policy Guideline, 2023, case law, we direct that the appellants’ imprisonment term of 40 years be calculated to begin to run from 12th May 2008, the date of their first arraignment in court.

10. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 24TH DAY OF APRIL, 2026

S. ole KANTAI

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JUDGE OF APPEAL

MUMBI NGUGI

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JUDGE OF APPEAL

KATWA KIGEN K.J.

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

