

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT THIKA
HIGH COURT CRIMINAL REVISION NO. E011 OF 2025
(CRIMINAL CASE FILE NO. E045 OF 2020 AT CM'S COURT
RUIRU)

PETER MUTUKU MUSYIMI.....
APPLICANT

-VERSUS-

REPUBLIC.....
RESPONDENT

RULING

1. The Applicant was tried and convicted of six counts of the offence of stealing a motor vehicle **and** stealing motor vehicle parts **contrary to sections 278(A) and 279(g) of the Penal Code** respectively. Particulars were that on 29th September 2020 at Kihunguro area in Ruiru Township within Kiambu County, the Applicant stole a motor vehicle registration number KAU 916A make Mitsubishi Canter valued at Kshs. 500,0000 the property of *Ayub Njoroge Muchoki*. Further, it was alleged that on diverse date he stole motor vehicle parts namely radio, speed governor, and four wheels of the same vehicle. That he stole motor vehicle, make canter registration KAA 651D valued at 309,000, property of one David Njoroge Njogu. That on diverse dates he also stole motor vehicle parts of the same said vehicle namely two car batteries, diff, front and rear axles, three-wheel drums and one propeller valued at Kshs. 150,000.
2. The charges ran up to count 8 where he allegedly stole motor vehicles and parts for different vehicles and from different

owners, on diverse dates, property of relatively immense value as per the trial court record.

3. The sentences were ordered to run consecutively. The Applicant has moved this court vide notice of motion application dated 2025 seeking for review of his sentence under section 333(2) of the criminal code. In his supporting grounds and affidavit of even date, the Applicant avers that in issuing his sentence of two years imprisonment in each count totalling to 12 years, the trial court failed to take into account the period that the Applicant had spent in custody pending the trial process.
4. The subject application for revision of sentence is supported by the Applicant's written submissions dated 14th June 2025. The Applicant relied on the provisions of **Section 333(2)** of the **Criminal Procedure Act** to anchor the argument that during sentencing the Court is enjoined to take to account the period spent in custody by the accused. Further guidance was placed in the decision of the Court in **Ahmad Abolfadhi Mihammed & Another vs Republic [2018] eKLR** and **Bethwell Wilson Kibor vs Republic [2009] eKLR**.
5. The Applicant urged the Court to exercise its supervisory jurisdiction over subordinate Courts under **Article 165(6)** of the Constitution of Kenya to hold that the trial Court failed to take to account the period of 1 year, 10 months and 25 days which the Applicant spent in custody prior to sentencing.
6. The Respondent through Counsel Mbau for Odpp conceded the Application indicating that the Trial court indeed failed to take into account that at the time of the Applicant's sentencing, he had already spent two and half years in custody.

7. **Section 333(2)** of the **Criminal Procedure Act** provides 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 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. It is therefore incumbent upon this court to delve into the issue as to whether the trial court failed to consider the period that the accused spent in custody. The trial court in sentencing the Applicant, stated:

“I have considered the mitigation and the nature of the offence which is rampant and there is need for a deterrent sentence. I have also considered the fact that the accused is a 1st offender and his mitigation and the time that he has been in custody, for these reasons, I hereby sentence him to serve two (2) years imprisonment in count 1, 2 years imprisonment in count 2, 2 years imprisonment in count 3, 2 years imprisonment in count 4, 2 years imprisonment in count 7 and 2 years imprisonment in count 8. 14 days right of appeal. Sentence to run consecutively.”

9. It is therefore evident that the trial court took consideration that the accused had been in custody for a period of time pending trial and sentencing.
10. Bearing in mind the words of the trial court and considering that the maximum penalty for the offence of stealing motor vehicle is seven (7) years while that of stealing motor vehicle parts is five (5) years; Considering also that the Applicant was convicted of six counts, the sentence meted is therefore lenient for each count.
11. The Court is alive to the fact that the accused was tried and convicted of six counts out of eight after trial. The court is also alive to the seriousness of the charges and the multiple counts faced by the Applicant.
12. In my view, the trial court covered itself by putting on record that it had taken into account the that the Applicant spent in custody pending the trial. I am therefore not convinced that there was any error of omission on the part of the trial court in as far as section **333(2) of the Criminal Procedure code** is concerned.
13. For the above reasons, I find that this application is not merited and I hereby dismiss it.
14. ***Final disposition: Application dismissed.***

Dated, Signed and Delivered virtually this 28th day of April, 2026.

**HON. T. W. OUYA
JUDGE**

In the presence of:

Torosi - Respondent/State

Applicant present at Kamiti Medium prison virtually

Kelvin/Hamza - Court Assistants

ORIGINAL