



**Ombaga v Republic (Criminal Miscellaneous Application
E044 of 2025) [2026] KEHC 6133 (KLR) (6 May 2026) (Ruling)**

Neutral citation: [2026] KEHC 6133 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E044 OF 2025**

RN NYAKUNDI, J

MAY 6, 2026

BETWEEN

NICODEMUS OMBAGA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application of the period spent in remand custody by dint of
Section 333(2) of the Criminal Procedure Code Cap 75 Laws of Kenya from
conviction and sentence at CM's Eldoret Criminal Case No. E245/2021)*

RULING

1. Before this Court is a notice of motion by the Applicant dated on 8th day of April 2025, seeking the following order:
 - a. That the Applicant is praying for fresh computation of sentence to include the time spent in remand custody.
 - b. That the said period to start from the date of arrest.
2. In support of the application is the affidavit of Nicodemus Ombaga who deponed as follows:
 - a. That I am the applicant in this matter hence competent to swear this affidavit
 - b. That I was charged with an offence of grievous harm contrary to Section 234 of the Penal Code and sentenced to serve 10 years' imprisonment.
 - c. That I did not oppose the sentence/charge
 - d. That I pray for the period spent in remand custody be included to the computation of my sentence.



Decision

3. The principles under Section 333(2) of the CPC are now well settled as demonstrated in the following case law:

“A declaration that trial Courts are enjoined by Section 333(2) of the Criminal Procedure Code, in imposing sentences, other than sentence of death to take into account of the period spent in custody. A declaration that those who were sentenced in violation of the said section are entitled to have their sentences reviewed by the high Court in order to determine their appropriate sentences. A declaration that Section 333(2) CPC applies to the original sentence as well as sentence imposed during sentencing...”

4. Additionally, in *Ahamad Ablofathi Mohammed & Another v Republic* [2018] eKLR 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, the Court was obliged to take into account the period that they 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 proportionality by the period spent in custody. It is not enough for the Court to merely state that it is 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 proviso 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 June 19, 2012.”

5. Sentencing is an integral part of criminal proceedings. As such, it is a matter governed by procedural law. The sentencing guidelines contemplated by Section 333(2) of the CPC are inherently transformative and forward-looking. Not only are they intended to give effect to the sentences prescribed by the Legislature in a Statute but also to achieve a criminal justice system that imposes punishment that is just to society, vindictive of the interests of the victims of crimes, and commensurate with the nature of the crime and the offender.
6. On sentencing matters appellate Courts are required to show defense to the Trial Judge’s decision, absent an error in law, an error in principle to the imposition of a sentence that is demonstrably unfit in the circumstances. In the Kenyan jurisdiction there is no authority given to the trial Courts for the dating back of any sentence in favor of an accused person. The sentence as by dint of the law is expected only to bear the date on which the learned trial Magistrate or Judge pronounces himself or herself when imposing the verdict on sentence. The only rider being the interpretation of Section 333(2) of the Criminal Procedure Code, providing for any period of incarceration which the accused has already undergone between the date of his or her arrest and the date of sentence to be taken into account as a material factor.



7. In the instance case the Applicant was arraigned in Court on 22nd January 2021 and thereafter tried and found guilty and subsequently convicted on 30th January 2024. During the pendency to the trial he was never released on bond under Article 49 (1) (h) of *the Constitution*. There is merit to have the sentence commencement date take effect on 22nd January 2021. This call for the amendment of the committal warrant so as to give credit for pretrial detention.

DATED, DELIVERED AND SIGNED AT ELDORET THIS 6TH DAY OF MAY 2026.

R. NYAKUNDI

JUDGE

