



REPUBLIC OF KENYA



KENYA LAW
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**Nyabando alias Kundo v Republic (Criminal Appeal 279 of 2019)
[2025] KECA 1025 (KLR) (30 May 2025) (Judgment)**

Neutral citation: [2025] KECA 1025 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CRIMINAL APPEAL 279 OF 2019
MSA MAKHANDIA, HA OMONDI & LA ACHODE, JJA
MAY 30, 2025**

BETWEEN

GEOFFREY NDUKO NYABANDO ALIAS KUNDO APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal from the Judgment of the High Court of Kenya at Nyamira
(E. N. Maina, J.) dated 20th December, 2018 in HCCR No. 26 of 2015)*

JUDGMENT

1. Geoffrey Nduko Nyabando alias Kundo, the appellant herein, was charged with murder contrary to section 203 as read with section 204 of the *Penal Code*. The particulars of the offence were that, on 7th October, 2012 at Nyaramba village, Mwachosire Sub- Location in Manga District within Nyamira County, the appellant murdered Kepha Bosire Kebaya.
2. The appellant pleaded not guilty to the charge and a fully- fledged hearing ensued. At the conclusion of the trial, he was convicted of the lesser offence of Manslaughter contrary to section 202 as read with section 205 of the *Penal Code* and sentenced to 10 years imprisonment.
3. The appellant was aggrieved by his conviction and sentence. He filed an appeal to this Court against both the conviction and sentence.
4. When the appeal was virtually heard on 19th May, 2025, the appellant was present from Kisumu Maximum Prison but his instructing Counsel was absent. Mr. Mwangi Learned Prosecution Counsel appeared for the respondent. The appellant elected to proceed with his appeal despite the absence of his advocate and despite the entreaties by the court not to. In the end he abandoned all other grounds of appeal and took up only the ground as regards the sentence. The appellant urged the Court to consider the time he had spent in custody while awaiting trial. Upon this Court inquiring from the appellant



about the sentence period remaining, the appellant informed the Court that he was remaining with only 3 months to serve his sentence to term.

5. In their response, Mr. Mwangi conceded to the request owing to the fact that the appellant would have served his sentence and been released by the time the judgment is delivered on 17th October, 2025.
6. In this appeal, the appellant urges the Court to factor in his sentence, the period he was in custody prior to his release on bond. Section 333 (2) of the *Criminal Procedure Code* “CPC” requires that the period spent in custody be considered in sentencing. In *Republic vs. Mwangi; Initiative for Strategic Litigation in Africa (ISLA) & 3 Others (Amicus Curiae) (Petition E018 of 2023) [2024] KESC 34 (KLR) (12 July 2024) (Judgment)*, the Supreme Court reiterated and affirmed that the period spent in remand custody whilst undergoing trial must be factored in sentencing, in accordance with section 333 (2) of the CPC.
7. This position was echoed by this Court in *Momanyi vs. Republic (Criminal Appeal 11 of 2020) [2022] KEHC 16302 (KLR) (14 December 2022) (Judgment)* where it was stated that the trial court is obligated to deduct the period spent in custody from the total sentence. The Court emphasized that the requirement is not merely a procedural formality but a substantive right of the accused, ensuring that the punishment is fair and just. The Court opined that failure to consider the time spent in custody could result in an unjustly prolonged period of incarceration and that the trial courts must adhere to this legal requirement to uphold the principles of justice and fairness in sentencing.
8. In the instant appeal, the appellant had been in custody from the date of his first arraignment in court for plea taking on 10th October, 2012. From the record, it is not clear the exact date that the appellant was released on bail. The appellant was first arraigned in court on 10th October, 2012, a ruling granting bail was delivered on 26th March, 2013 and the approval of the 1st surety was on 3rd April, 2013.
9. By dint of section 333(2) of the CPC, the trial court was obliged to take into account the period that he had spent in custody before he was released on bond. When sentencing the appellant, the trial court stated as follows:

The offence of manslaughter attracts a life sentence. In this case however, the court has taken into account that the accused is a first offender and that he is remorseful. It is however also not lost to the court that the accused by his unlawful conduct surfed (sic) out the life of the deceased and denied him the chance of fending for his wife and children too. I am not persuaded that a non custodial sentence suits the rime. The accused is to serve ten [10] years imprisonment. Right of appeal explained.”
10. Turning to the appeal before the Court, it is common ground that in sentencing the appellant, the trial court did not factor in the period that the appellant had been in remand custody before being released on bond. Before the Court, the appellant stated that he was in custody for six months before being released on bond.
11. As this was a legal requirement and based on the foregoing authorities, the appeal on sentence is allowed to the limited extent that the sentence imposed factors in the period spent in custody before being released on bond which is from 10th October 2012 being the date of the appellant’s first arraignment in court to 3rd April, 2013 when the surety was approved. In computing the period to serve sentence, we direct that the period that he was in custody be factored in.
12. As the appellant was in remand custody for six months before his release on bond and he has three months of his sentence left, then the only cure to this situation is to order for his immediate release, which we hereby do. Orders accordingly.



DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF MAY, 2025.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

H. A. OMONDI

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JUDGE OF APPEAL

L. ACHODE

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR

