



REPUBLIC OF KENYA



KENYA LAW
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**Wanje v Republic (Criminal Revision E192 of 2024)
[2025] KEHC 3540 (KLR) (28 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 3540 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E192 OF 2024**

M THANDE, J

FEBRUARY 28, 2025

BETWEEN

KITSAO CHARO WANJE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. In the Application before me, the Applicant seeks that the period spent in remand custody be considered as part of his 3 year sentence that was imposed upon him, in Malindi Criminal Case No. 809 of 2017. The Applicant states was charged with the offence of dealing with specified endangered wildlife and was on 16.5.24 convicted and sentenced to 3 years imprisonment.
2. The Respondent did not file any response and urged the Court to make a decision after looking at the lower court file.
3. Although the Applicant does not indicate the period spent in custody, the lower court record shows that he was arrested on 30.10.17 and released on bond on 24.12.18.
4. Section 333(2) of the *Criminal Procedure Code* provides as follows:

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.



5. The proviso to Section 333(2) of the *Criminal Procedure Code* requires that court while sentencing, to take into account the period an accused person has spent in custody pending trial. In the case of *Bethwel Wilson Kibor v Republic* [2009] eKLR, the Court of Appeal had this to say about the said proviso:

The incident took place way back in 1999. The appellant was promptly arrested and taken to court. There were long adjournments due to transfers and/or changes of trial Judges resulting in long incarcerations of the appellant. By proviso to section 333(2) of *Criminal Procedure Code* where a person sentenced has been held in custody prior to such sentence, the sentence shall take account of the period spent in custody. Ombija, J who sentenced the appellant did not specifically state that he had taken into account the 9 years period that the appellant had been in custody.

The appellant told us that as at 22nd September, 2009 he had been in custody for ten years and one month. We think that all these incidents ought to have been taken into account in assessing sentence.

6. Flowing from the above authority, it is clear that a trial court must specifically state that the period spent in custody by an accused person pending trial, has been taken into account when imposing sentence.
7. From the record, there is no mention by the trial court that the period that the Applicant had spent in custody pending trial, was taken into account when sentencing him. This is a serious omission on the part of the trial court, as it amounts to non-compliance with an express statutory provision.
8. In the end and in view of the foregoing, I find that the Application herein is merited and is allowed on terms that the sentence imposed upon the Applicant shall be reduced by the period from 30.10.17 to 24.12.18.

DATED AND DELIVERED IN MALINDI THIS 28TH DAY OF FEBRUARY 2025

M. THANDE

JUDGE

