



**Mukhangai v Republic (Criminal Miscellaneous Application
E042 of 2024) [2025] KEHC 5261 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5261 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E042 OF 2024**

RN NYAKUNDI, J

APRIL 29, 2025

BETWEEN

RICHARD CHESONI MUKHANGAI PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner approached this court vide a Notice of motion filed on 17th April, 2024 seeking reliefs under section 333(2) of the *Criminal Procedure Code*. He seeks that his sentence commences from the time he was placed in pre-trial custody. The applicant stated that he was charged and convicted with the offence of murder contrary to section 203 as read with 204 of the *Penal Code* in Criminal Case No 50 of 2012 and sentenced to serve 20 years' imprisonment.
2. The litigation history and the record indicates that the applicant first appealed to the Court of Appeal, which appeal was dismissed in its entirety vide C.O.A CR. No E207 of 2024 at Nakuru. The applicant has since approached this court seeking that his sentence may be reviewed under the provisions of section 333(2) of the *Criminal Procedure Code*. He seeks that the court may allow his sentence to commence from the day of his arrest being 8th January, 2012 and not the date of conviction being 12th March 2020.
3. In the case of *Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others* [2021] eKLR which I fully associate myself with. The Court held as follows;

“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 resentencing...”

4. Additionally, in *Abamad Abolfathi 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*. By dint of section 333(2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had 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 proportionately by the period already spent in custody. It is not enough for the court to merely state that it 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. The court remains acutely mindful that detaining individuals before trial fundamentally erodes the constitutional guarantee of innocence presumption enshrined in Article 50(2)(a) of our *Constitution*. When defendants cannot meet bail requirements set by trial courts, a right protected under Article 49(1)(h), they face detention that disproportionately infringes upon the fundamental rights and freedoms detailed in Chapter Four of the *Constitution*. This creates an unjust scenario where individuals have no compensation pathway should they ultimately be acquitted or have charges dismissed.
6. Pre-trial detention carries profound personal consequences. Those held in custody during proceedings often lose employment, cannot provide for their families, and endure significant psychological distress associated with incarceration. Public perception frequently remains unsympathetic toward those remanded in custody, and the stigma persists well beyond release. Recognizing these harsh realities, the legislature adopted a rights-based approach through Section 333(2) of the *Criminal Procedure Code*, requiring courts upon conviction to credit time already served in pre-trial detention as a mitigating factor when imposing custodial sentences.
7. For those reasons, the application succeeds to the extent that the 20 years’ custodial sentence imposed shall take effect from the 8th January, 2012 in consonant with the provisions of section 333(2) of the *Criminal Procedure Code*. The committal warrants shall therefore be amended to give credit of that period which the accused was held in custody during the pendency of this trial.
8. It is so ordered.

SIGNED, DATE AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL 2025.

In the Presence of



M/s Kirenge for the State

Accused

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R. NYAKUNDI

JUDGE

