



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Too v Republic (Criminal Petition E082 of 2023)
[2025] KEHC 5323 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5323 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E082 OF 2023**

RN NYAKUNDI, J

APRIL 29, 2025

**IN THE MATTER OF TIME SPENT IN REMAND CUSTODY AS PER THE
PROVISIONS OF SECTION 333(2) OF THE CRIMINAL PROCEDURE
CODE, CAP 75 LAWS OF KENYA IN RELIANCE TO ARTICLE 48 OF THE
CONSTITUTION OF KENYA 2010**

AND

**IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER
ARTICLE 22(1) AND THE MATTER OF CONTRAVENTION OF ARTICLE
27(1)(2)(4), 28, 50(1)(2), 51(1), 24(1), 165(3) AND ARTICLE 258(1)
OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

KENNEDY KIPKOECH TOO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. What is pending before me for determination is an undated Notice of Motion Application where the Petitioner/Applicant is seeking the following orders:
 - a. The Petitioner is seeking reduction of sentence by the time he spent in remand under section 333(2) of the CPC and Articles 22(1), 27(1)(2)(4) of the *Constitution* of Kenya 2010.
2. The Petition is based on the grounds on the face of it among others:
 - a. That the Petitioner has been in prison for a long time.



- b. That the Petitioner spent 1 year and 1 month under remand custody.
 - c. That may this Honourable Court be pleased to review his terms of sentence and invoke the provisions of section 333(2) of the Criminal Procedure Code and reduce his sentence with the period he spent under the tough unbearable conditions at the remand.
 - d. That the constitutionality of section 333(2) of the CPC Cap 75 Laws of Kenya does not contravene Article 27(1), (2), (4) of the Constitution of Kenya 2010.
 - e. That may this Honourable Court be pleased to give full effect to the realization of the rights guaranteed under Article 27, 28, 22(1), 50(1)(2), 5(1) and 258(1) of the Constitution of Kenya and incorporate legislative measures, affirmative action programmes and policies designed to review the disadvantages suffered by the petitioner because of past discrimination.
 - f. That this Honourable Court has unlimited original jurisdiction, powers and discretion as contemplated under Article 22(1) and 165(3) a, b & f of the Constitution of Kenya 2010.
3. The Application is supported by the annexed supporting affidavit dated 12th October 2023 sworn by Kennedy Kipkoech Too, the Petitioner herein which averments echo the grounds of the petition.

Analysis and Determination

4. On perusal of the application, the main issue for determination herein is whether the applicant is entitled to review of sentence under Section 333(2) of the Criminal Procedure Code.
5. The above case calls for the review of the legal framework governing the time spent in custody factor in Criminal cases. Section 333(2) of the Criminal Procedure Code provides:

“Subject to the provisions of Section 38 of the Penal Code, 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”

6. Moreover, this court is empowered by Article 165(6) of the Constitution of Kenya to review a decision by a subordinate court. Article 165(6) provides:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

7. This Court in *Bethwel Wilson Kibor vs Republic* [2009] eKLR expressed itself as follows: -

“By provision to section 333(2) of the Criminal Procedure Code where a person sentenced has been held in custody prior to such sentence, the sentence shall take into 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.”

8. Furtherance to this, The Judiciary Sentencing Policy Guidelines provides that: “The provision to section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an



offender, the court must take into account the period in which the offender was held in custody during the trial.”

1. From the above provisions of the statute and case law, it is clear that the law requires courts to take into account the period the convict spent in custody. I take cognizant note that the Petitioner/Applicant was arrested in 6th February 2018 and sentenced on 8th March 2019. This period was not factored in the sentencing of the Applicant being 1 year and 1 month. Consequently, from the above this application is merited and the committal warrant to prison be amended with a commencement being the date of arrest 6th February 2018. It is so ordered.

DELIVERED, DATED AND SIGNED AT ELDORET ON THIS 29TH APRIL 2025

.....

R. NYAKUNDI

JUDGE

