



REPUBLIC OF KENYA



KENYA LAW
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**Kabuga v Republic (Criminal Petition E010 of 2024)
[2025] KEHC 7679 (KLR) (30 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7679 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
CRIMINAL PETITION E010 OF 2024**

RL KORIR, J

MAY 30, 2025

BETWEEN

MICHAEL MUTWIRI KABUGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner Michael Mutwiri Kabuga was the 5th Accused in Chuka High Court Criminal Case No.39 of 2015. Alongside his co-accused, they were charged with the murder of one Morris Muriithi (deceased) on 2nd April, 2015 at Mumbuni market, Kandungu within Tharaka Nithi County.
2. All five accused were tried and convicted by Limo J in a Judgement dated 24th October 2019.
3. The Petitioner (5th Accused) alongside the 2nd, 3rd and 4th Accused were sentenced to 14 years' imprisonment each while the 1st Accused was sentenced to 20 years imprisonment.
4. According to court records all five Accused appealed their conviction and sentence to the Court of Appeal.
5. During the pendency of their respective appeals in the Court of Appeal, the Petitioner filed this present Petition styled as a Notice of Motion dated 21st March 2024 seeking a review of his sentence to include the period he spent in pre-trial custody.
6. The Petitioner listed several articles of the *Constitution* including Articles 19, 20, 22, 23, 25, 27, 28, 29, 50, 51, 159 and 165, Section 333 of the *Criminal Procedure Code* as the basis for his petition. His main prayer is reduction of his sentence.
7. The Petitioner also listed several grounds which can be reduced into two namely that he was in pre-trial custody for a period of 4 years and 4 months; and; that failure to include the said period in his sentence



resulted in a violation of his constitutional rights under Article 27 of the Constitution. He relied on the case of *Ahamad Abolfathi Mohammed and Another vs. Republic* [2018] eKLR.

8. The Petitioner filed a supporting affidavit dated 21st March, 2024 in support of his petition. The averments in the affidavit mirror the grounds already reproduced above.
9. At the hearing of the Petition on 26th March, 2025, the Applicant urged the court to reduce his sentence by the time spent in pre-trial custody.
10. On her part the learned prosecution Counsel submitted that the Application was brought under Section 333 and her perusal in the trial court proceedings, showed that the petitioner had been in custody from 5th April, 2015 to 24th October, 2019. She submitted that the period had not been taken into account in the sentence and that consequently the Republic did not oppose the Application.
11. I have considered the Petition.

Section 333(2) of the Criminal Procedure Code provides:-

“333(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”

12. In considering the petition, I called for and perused the trial record. I also considered the Petitioner’s appeal to the Court of Appeal. The Petitioner stated in his application that he had withdrawn his appeal in the Court of Appeal. That position was incorrect as his appeal was determined in a Judgment dated 17th January, 2025.
13. I have read the Judgement of the Court of Appeal. It sets out the background to the appeal. It shows that the Petitioner along with his co-appellants had been served a notice of enhancement of sentence by the Republic and were duly warned by the court. That as a consequence, the 1st Appellant withdrew his appeal while the Petitioner and his other co-accused pressed on with the appeal.

At paragraph 70 of the Judgement, the court held:-

“In the result, the appeal against conviction and sentence is dismissed. We enhance the 2nd to 5th appellants’ sentences of 14 years’ imprisonment to a sentence of thirty (30) years’ imprisonment for the 2nd, 3rd, 4th and 5th appellants from the date the appellants were first arraigned in court.”

14. From the above, it is clear to this court that the court of Appeal answered the Petitioner’s prayer to have the time he spent in pre-trial custody included in his sentence. The superior court spoke with finality.
15. In the result therefore, I find the Petition already spent and the orders sought cannot be granted. It is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 30TH DAY OF MAY, 2025.

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R. LAGAT KORIR



JUDGE

Ruling delivered in the presence of the Petitioner present at Meru G.K. Prison, Ms Rukunga for the Republic;
Muriuki (Court Assistant).

