



REPUBLIC OF KENYA



**Masika v Republic (Petition E054 of 2023) [2025] KEHC 6902 (KLR) (28 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6902 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET**

**PETITION E054 OF 2023**

**RN NYAKUNDI, J**

**MAY 28, 2025**

**BETWEEN**

**EVANS WANYAMA MASIKA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application by the Petitioner seeking the following orders:
  - i. That the prayers sought are on sentence only
  - ii. That the petition be allowed, admitted, heard and determined in the soonest time possible
  - iii. That the petition is seeking enforcement of section 333(2), 362, 364(1) and 365 of the criminal procedure code in relation to sentences that have not factored the time spent in custody in reliance on article 27(1) (2) (4), 22, 28, 25(c), 50(1) (2) of *the constitution* of Kenya
  - iv. That I am seeking reduction of my sentence by 1 year 10 months the period I spent in remand custody but was not factored in the 4 years sentence
  - v. That I beg to be present during hearing thereof
2. It is further annexed by an affidavit sworn by the said Evans Wanyama Masika which states as follows:
  - i. That I am a Kenyan citizen adult male of sound of mind hence competent to swear this affidavit
  - ii. That, I was convicted and sentenced to serve 4 years imprisonment for the offence of unnatural offence c/sec 162 of the penal code
  - iii. That I spent 1 year 10 months in pre-trial custody
  - iv. That I am a young man who is seeking for a second chance in life since I have a young family depending on me.



- v. That may this honorable court exercise section 333(2) of the CPC and allow my sentence to commence as mitigated.
  - vi. That I am a first offender
  - vii. That I beg to be present during hearing thereof
  - viii. That what I have deponed herein is true and correct to the best of my knowledge, belief and understanding sources of my information
3. This Application is purely on pre-sentence custody envisioned in Section 333(2) of the CPC. The term now very common in our sentencing scheme is sometimes rereferred to as pre-trial custody, time served in custody, remand custody, or pre-trial detention. The sentence determined under Section 333(2) of the code is the amount of custodial detention time which the Applicant though eligible for bond did not manage to meet the conditions set by the trial court. Generally speaking, the courts in deciding what sentence to impose on a person convicted of an offence ought to take into account the time he or she has spent in custody awaiting trial, and subsequent conviction and sentence. On the other hand, under the present criminal code a sentence commences only on entry of judgement by the trial court. The intention of parliament under Section 333(2) of the code was to remind the prosecution and the judiciary that an accused person has a right to have his or her offence prosecuted within a reasonable time. If this is the rationale then the Applicant is entitled to a credit period of one year 10 months. The committal warrant then shall therefore be amended to give effect to the provisions of Section 333(2) of the code.
4. It is so ordered.

**GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 28<sup>TH</sup> DAY OF MAY 2025.**

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**R. NYAKUNDI**  
**JUDGE**

