



**Shitandi v Republic (Miscellaneous Criminal Application
E125 of 2024) [2025] KEHC 9316 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9316 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E125 OF 2024**

S MBUNGI, J

JUNE 30, 2025

BETWEEN

ATNAS NANDI SHITANDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant herein was charged with the offence of robbery with violence contrary to section 295 as read with section 296(2) of the penal code.
2. He was convicted and sentenced to serve 33 years imprisonment sentence on the 19th day of July 2018 by Hon. B Ochieng (CM)
3. Being aggrieved, he appealed to the high court vide HCCRA NO 119 OF 2023, which was allowed on sentence only and 15 years was imposed in sub state of 33 years vide Judgement dated 2019.
4. The application present is for the sentence to be allowed to run from the date and day of arrest in accordance to the provisions of section 333(2) of the *Criminal Procedure Code*.
5. The appellant states he was arrested in September 2016 and remained in custody until he was sentenced.
6. It is his assertion that the two courts did not take into account the period of time spent in custody prior to being sentenced.



Analysis.

7. The applicant has cited section 333(2) of the Criminal Procedure Code which provides as follows:

“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.”
8. The Jurisdiction of the high court to review is donated by article 165 (6) & (7) of the Constitution. The article provides:-

“(6) 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. For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.”
9. The jurisdiction is supervisory and it extended to the High court to review the decisions and orders of the sub-ordinate court. It grants the High Court supervisory jurisdiction over Sub-ordinate Courts.
10. I have perused the trial court proceedings and judgment in Kakamega Criminal Case No. 119 of 2018 In the court’s pronouncement, there is no evidence that section 333(2) of the CPC was complied with.
11. According to the charge sheet, the applicant was arrested on 14.10.2016 and first arraigned in court on 24.10.2016 The applicant remained in custody throughout the trial until the date of sentencing by the trial court.
12. The sentence of 15 years’ imprisonment to commence from the date of arrest being 14.10.2016 pursuant to section 333(2) of the CPC.
13. Right of appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 30TH DAY OF JUNE, 2025.

S.N MBUNGI

JUDGE

In the presence of:-

Elizabeth, Court Assistant.

Ms Osoro for the ODPP.

Applicant present online.

