



**Kipkurgat v Republic (Miscellaneous Application E157 of 2021)  
[2025] KEHC 9116 (KLR) (27 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9116 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
MISCELLANEOUS APPLICATION E157 OF 2021  
RN NYAKUNDI, J  
JUNE 27, 2025**

**BETWEEN**

**JOHN KIPKURGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this court is an application dated 6<sup>th</sup> day of June 2024 seeking the following orders:
  - i. That the period spent in remand be computed to the current sentence
  - ii. That the said period so spent during the pre-trial period to start from the date of arrest
2. The application is based on grounds that during delivery of judgement, the applicant was nervous and could not comprehend what was going on and that he has since come to realize that the period spent in remand custody was not accounted for pursuant to the provisions of section 333(2) of the [Criminal Procedure Code](#) as was held by Justice George Odunga sitting in Machakos (2021) eKLR.
3. The applicant was charged, convicted and sentenced to 10 years imprisonment for the offence of Rape contrary to section 3(1) of the [Sexual Offences Act](#).

**Determination**

4. The applicant's grievance is mainly on the pre-trial credit period under section 333(2) of the CPC. It is worth acknowledging on our sentence regime that the accused person is entitled to be given credit for the period spent in spent in custody while awaiting the conclusion of his/her case.



5. In the case of *Vincent Sila Jona & 87 Others vs 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...”

6. The court remains mindful that detaining individuals before trial fundamentally erodes the constitutional guarantee of innocence presumption enshrined in Article 50(2)(a) of our Constitution. When accused persons 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.

7. It is therefore important that section 333(2) of the *CPC* be complied with as part of the structure sentence imposed by the court. As a consequence of the sentence imposed by the trial court should incorporate the three(3) years already spent in custody before the conclusion of his case. The committal warrant shall be amended accordingly for the three years to be given as part of the remission by the prison authorities to entitle the Applicant an early release.

8. It is so ordered.

**SIGNED, DATE AND DELIVERED AT ELDORET THIS 27<sup>TH</sup> DAY OF JUNE 2025.**

.....

**R. NYAKUNDI**

**JUDGE**

Representation:

M/s Sidi for the State

