



REPUBLIC OF KENYA



**Situeti v Republic (Miscellaneous Criminal Application
E084 of 2024) [2025] KEHC 9288 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9288 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
MISCELLANEOUS CRIMINAL APPLICATION E084 OF 2024**

S MBUNGI, J

JUNE 24, 2025

BETWEEN

ANTONY KANYAHA SITUETI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein filed a Notice of Motion dated 23rd August 2023, seeking a review of his sentence in Kakamega Criminal Case No. 1437 of 2014.
2. The motion filed by the applicant is brought under section 22(1), 23(1) 25(c) 27(10) 50(2) (p)&(q) and 165 (3)(b) of the *Constitution of Kenya 2010*.
3. The applicant was charged and convicted for the offence of murder contrary with Section 203 of the *Penal Code* as read with Section 204 and was sentenced to serve death penalty which was later commuted by the president to life sentence.
4. The applicant was arrested on 7th July 2014 and remained in remand until his conviction on 13th October 2017. He now seeks that the period spent in remand be factored into the remaining sentence.
5. He argues that the trial court failed to consider the time already served in custody, which violates section 333(2) of the *Criminal Procedure Code* and his constitutional right to a fair trial.
6. In his supporting affidavit, the applicant reiterated that although his sentence was later commuted by the president to life sentence, he contends that the trial court failed to factor in the period spent in remand, contrary to section 333(2) of the *Criminal Procedure Code*.



Analysis and Determination

7. The right to have the period spent in custody prior to conviction taken into account is a statutory and constitutional safeguard under Section 333(2) of the *Criminal Procedure Code*, which the Court retains jurisdiction to enforce through revision. I note that while meting the sentence, the court did not take into account the time spent in remand during trial.

8. According to The *Judiciary Sentencing Policy Guidelines 2023*:

“Section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.

Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.”

9. Section 333(2) of the *Criminal Procedure Code* 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.”

10. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.

11. According to the charge sheet, the applicant was arrested on 7.07.2014. The applicant remained in remand throughout the trial until the date of sentencing by the trial court on 7.11.2017.

12. However, in this case, the applicant was sentenced to life imprisonment, which is an indefinite sentence. The law does not provide for a specific term for life imprisonment unless provided by statute or reviewed by an appellate court. Therefore, the Court cannot make an order that the sentence should commence from the date of arrest, as this would be inconsistent with the nature of a life sentence.

13. Moreover, this case was tried and determined by the High Court, which convicted the applicant of the offence of murder under Section 203 as read with Section 204 of the *Penal Code* and sentenced him to death. That sentence, though later commuted by executive action to life imprisonment, still stands as a final decision of this Court.

14. As such, this court is functus officio, it has already discharged its mandate regarding both conviction and sentence and therefore lacks jurisdiction to reopen or vary that judgment. Any grievances regarding the sentence, including the period spent in custody or its legality, can only be addressed by the Court



of Appeal, which is superior to this court and constitutionally mandated to entertain appeals from the High Court.

15. For the above reasons, I find that this court lacks jurisdiction to entertain the application. The applicant's remedy lies in filing an appeal to the Court of Appeal for appropriate consideration of the issues raised.
16. The application for review of sentence is hereby dismissed.
17. The applicant is advised to pursue redress through the Court of Appeal if still aggrieved.
18. It is so ordered.
19. Right of Appeal 14 days.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24TH DAY OF JUNE, 2025

S.N MBUNGI

JUDGE

In the presence of:

Court Assistant – Elizabeth Angong'a

Ms. Osoro for the Applicant present online.

Applicant present online.

