



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanyonyi & 2 others v Republic (Criminal Miscellaneous Application  
E047 of 2025) [2025] KEHC 11300 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11300 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E047 OF 2025**

**A MABEYA, J**

**JULY 31, 2025**

**BETWEEN**

**ERICK SIFUNA WANYONYI ..... 1<sup>ST</sup> APPLICANT**

**FRANCIS BARASA WAKHUNGU ..... 2<sup>ND</sup> APPLICANT**

**ZADOCK WAMALWA MUTEKHELE ..... 3<sup>RD</sup> APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 10/12/2013, Zadock Wamalwa, Francis Barasa Wakhungu and Erick Sifuna were arraigned before the High Court at Bungoma on a charge of murder contrary to section 203 as read with section 204 of the [Penal Code](#), Cap 63 Laws of Kenya. It was alleged that on 16/10/2013 at Sintayi Village, Bungoma County, together with another not before court, they murdered David Wanyonyi Nyongesa.
2. After trial, they were found guilty, convicted of the offence and sentenced to 20 years' imprisonment. They appealed to the Court of Appeal where their appeal was heard and dismissed on 25/3/2025.
3. By an undated Motion on Notice, the applicants have sought that the provisions of section 333(2) of the [Criminal Procedure Code](#) be taken into account in computing the period of their incarceration. The State did not oppose the application but urged the Court do consider what the appellate Court held on their sentence.
4. Section 333(2) of the [Criminal Procedure Code](#) provided that: -

“Subject to the provisions of section 38 of the [Penal Code](#) (Cap 63) 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.”

5. I have considered the entire record. I have also considered the decision of the Court of Appeal dated 25/3/2025. In its penultimate holding, that Court observed: -

“In light of all the circumstances including the mitigation offered that they were first offenders whose families depended on them as bread winners, we think the 20 years’ sentence was reasonable if not lenient.”

6. In this regard, since the Court of Appeal has rendered itself on the sentence, I cannot purport to review it. Let the applicants apply to that Court to consider section 333(2) of the [Criminal Procedure Code](#) if they so wish.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 31<sup>ST</sup> DAY OF JULY, 2025.**

**A. MABEYA, FCI Arb**

**JUDGE**

