



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Kariuki v Republic (Criminal Revision E080 of 2025)
[2025] KEHC 12364 (KLR) (3 September 2025) (Ruling)**

Neutral citation: [2025] KEHC 12364 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
CRIMINAL REVISION E080 OF 2025
DKN MAGARE, J
SEPTEMBER 3, 2025**

BETWEEN

SIMEON GITHAE KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a Ruling over an Application dated 16.4.2025 and filed by the Applicant seeking to review sentence meted out against him in Karatina MCCR No. E352 of 2022 vide the Judgement dated and delivered by Honourable E. Kanyiri, Principal Magistrate on 3rd day of January, 2025.
2. The trial court sentenced the Applicant having found him guilty on the offence of burglary contrary to section 304 (2) of the penal code and stealing contrary to section 279 (b) of the penal code. The Applicant was also charged in the alternative with handling stolen goods contrary to section 322 (1) and (2) of the penal code. The Applicant was sentenced to serve 1 year imprisonment.
3. The Applicant stated that the trial court did not consider the time spent in custody as required under Section 332(2) of the Criminal Procedure Code.
4. The Respondent conceded that the court did not consider the time spent in custody.

Analysis

5. The court has considered the Application. The issue is whether the time spent in custody was not considered.
6. The trial court considered the case and having convicted the Applicant sentenced him to serve 1 year imprisonment. Aggrieved, the Applicant filed for revision of the sentence only.



7. In of the High Court of Malaysia in Public Prosecutor vs. Muhari bin Mohd Jani and Another [1996] 4 LRC 728 at 734, 735 it was stated as doth:

“The powers of the High Court in revision are amply provided under section 325 of the Criminal Procedure Code subject only to subsections (ii) and (iii) thereof. The object of revisionary powers of the High Court is to confer upon the High Court a kind of “paternal or supervisory jurisdiction” in order to correct or prevent a miscarriage of justice. In a revision the main question to be considered is whether substantial justice has been done or will be done and whether any order made by the lower court should be interfered with in the interest of justice...If we have been entrusted with the responsibility of a wide discretion, we should be the last to attempt to fetter that discretion...This discretion, like all other judicial discretions ought, as far as practicable, to be left untrammelled and free, so as to be fairly exercised according to the exigencies of each case.”

8. The purpose and objectives of sentencing as stated in the Judiciary Sentencing policy should be commensurate and proportionate to the crime committed and the manner in which it was committed. The sentencing should be one that meets the end of justice and ensures that the principles of proportionality, deterrence and rehabilitation are adhered to. The objectives of sentencing as set out in the 2023 Sentencing Guidelines are as follows:

“1.3.1 Sentences are imposed to meet the following objectives. There will be instances in which the objectives may conflict with each other – insofar as possible, sentences imposed should be geared towards meeting the objectives in totality.

- i. Retribution: To punish the offender for their criminal conduct in a just manner.
- ii. Deterrence: To deter the offender from committing a similar or any other offence in future as well as to discourage the public from committing offences.
- iii. Rehabilitation: To enable the offender to reform from his/her criminal disposition and become a law-abiding person.
- iv. Restorative justice: To address the needs arising from the criminal conduct such as loss and damages sustained by the victim or the community and to promote a sense of responsibility through the offender’s contribution towards meeting those needs. Community
- v. Protection: To protect the community by removing the offender from the community thus avoiding the further perpetuation of the offender’s criminal acts.
- vi. Denunciation: To clearly communicate the community’s condemnation of the criminal conduct.
- vii. Reconciliation: To mend the relationship between the offender, the victim and the community.



viii. Reintegration: To facilitate the re-entry of the offender into the society”

9. The law under Section 333(2) of the Criminal Procedure Code provides as doth:

“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 clear from the above proviso that the law requires courts to take into account the period the convict spent in custody. The Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018]eKLR stated as follows as regards time spent in custody:

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the Criminal Procedure Code. By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on 19th June 2012.”

11. I am also guided by the Judiciary Sentencing Policy Guidelines, 2023 as follows:

“The proviso to Section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”



12. The revisionary power of this court also serves the supervisory role and the court is empowered by Article 165(6) of *the Constitution* of Kenya to review a decision by a subordinate court. Article 165(6). The relevant provision is as doth:

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.

13. The trial court stated that the Applicant had stayed in custody for 2 years 3 moths and 25 days. However other than lamentation on the sentence it is clear that the period was not considered. Secondly, it is not factually correct that the applicant was in custody for all the said period. He was serving a six-month sentence at some point in the trial. That period cannot be taken into consideration since such sentence is to run consecutively. In effect the said period is then reduced to 1 year nine months and 25 days. The accused was also released on cash bail on 3.1.2023. Thus, he was in custody for period of 48 days. He was rearrested on 21.08.2024. This makes him to be in custody for the entire period of the sentence meted out. Sentencing guidelines, provide for a scenario where the sentence meted out has been served. they provide as follows:

An offender convicted of a misdemeanour and who had been in custody throughout the trial for a period equal to or exceeding the maximum term of imprisonment provided for that offence, should be deemed to have served their sentence and be released immediately.

14. The applicant has also been in custody from 24.08.2024 to date. The net effect is that the applicant has served the entire period. If the court wished him to serve more than three years, it should have said so. For the time being, the sentence of one year is fully served. The application is thus allowed.
15. The sentence is reduced to the period served. Consequently, the applicant is released unless otherwise lawfully held.

Determination

16. In the upshot, I make the following orders: -
- a. The sentence is reduced to the period served.
 - b. Consequently, the applicant is released unless otherwise lawfully held.
 - c. The file is closed.

**DELIVERED, DATED AND SIGNED VIRTUALLY ON THIS 3RD DAY OF SEPTEMBER, 2025.
RULING DELIVERED THROUGH MICROSOFT TEAMS ONLINE PLATFORM.**

KIZITO MAGARE

JUDGE

In the presence of: -

Applicant

Mr. Kimani for the Respondent

Court Assistant- Michael

