



REPUBLIC OF KENYA



KENYA LAW
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**Wambani v Republic (Miscellaneous Criminal Application
E029 of 2023) [2024] KEHC 6188 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6188 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2023**

WM MUSYOKA, J

MAY 31, 2024

BETWEEN

LINUS OUMA WAMBANI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The application herein, dated 29th November 2023, and filed on even date, seeks review of sentence. The applicant had been convicted, on 13th April 2021, in Busia CMCRC No. E2808 of 2023, of burglary, contrary to section 304(2), and stealing, contrary to section 279(b), of the *Penal Code*, Cap 63, Laws of Kenya. He was sentenced to serve 4 years for burglary, and 2 years for stealing, to run consecutively.
2. I shall take it that he seeks revision, under section 362 of the *Criminal Procedure Code*, Cap 75, Laws of Kenya, on the basis that the trial court did not apply section 333 of the *Criminal Procedure Code* to that sentence. The proviso to that provision is to effect that any time spent in custody prior to sentence should be reckoned.
3. I see from the record that the trial court did not factor that in the sentence pronounced. The applicant was presented in court on 4th November 2021, for plea-taking, having been arrested on 3rd November 2021. He denied the charges. Although he was admitted to bail/bond, the same was never processed, hence he remained in custody. He changed plea, on 13th April 2022, when he pleaded guilty, was convicted and sentenced.
4. He should benefit from section 333 of the *Criminal Procedure Code*, and I hereby revise the sentence order of 13th April 2022, to include an order that the period that the applicant spent in custody shall be reckoned in the sentence that the trial court imposed. This file shall be closed hereafter. Orders accordingly.



**RULING DELIVERED, DATED AND SIGNED, IN OPEN COURT, AT BUSIA, ON THIS 31ST
DAY OF MAY 2024**

W MUSYOKA

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

Mr. Arthur Etyang, Court Assistant.

Mr. Linus Ouma Wambani, the applicant, in person.

Advocates

Ms. Chepkonga, instructed by the Director of Public Prosecutions, for the respondent.

