



REPUBLIC OF KENYA



KENYA LAW
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**Mutisya v Republic (Criminal Revision E210 of 2022)
[2023] KEHC 3268 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3268 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E210 OF 2022**

TM MATHEKA, J

MARCH 29, 2023

BETWEEN

JAMES MALONZA MUTISYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant vide an undated chamber summons filed on November 17, 2022 seeks the review of his sentence under section 332(2) of the [Criminal Procedural Code](#).
2. On January 8, 2008, he was sentenced to serve 30 years imprisonment for rape contrary to section 140 of the [Penal Code](#) in Kilungu RMCRC 237/2006.
3. The record shows he was arrested on May 25, 2006 and he took plea on June 5, 2006. He was granted a bond of Kshs 200,000/= with a surety of similar surety amount. He remained in custody until January 8, 2008 when he was sentenced to 30 years' imprisonment.
4. It is evident from the record that in meting the sentence the learned trial magistrate did not abide by the provisions of section 333(2) of the [Criminal Procedure Code](#) – which states: -

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
.....

Provided that where the person sentenced under sub-section (1) has prior to such sentence been held in custody, the sentence shall take account of the period spent in custody.”

5. Pursuant to the above provision, it was necessary for the learned trial magistrate to indicate whether or not he had taken into account the period the applicant had been in custody pending trial.



6. In the absence of that – it is only fair and just – that pursuant to this court’s supervisory jurisdiction under article 165(6) and 7 of the Constitution – the applicant’s sentence is revised as follows: –
- i. The applicant to serve 30 years’ imprisonment with effect from May 25, 2006 which is the date he was arrested and placed in custody.
 - ii. A revised committal warrant to issue accordingly and be served upon Kenya Prisons Services, the officer in charge Makueni Main Prison for compliance.

DATED, SIGNED & DELIVERED THIS 29TH DAY OF MARCH, 2023.

MUMBUA T. MATHEKA

JUDGE

CA: Mwiwa

Applicant Present in Court

Ms. Nyakibia for State

