



**Mutahu v DPP (Criminal Miscellaneous Application E060 of 2024)  
[2025] KEHC 1361 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1361 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL MISCELLANEOUS APPLICATION E060 OF 2024  
S MBUNGI, J  
FEBRUARY 10, 2025**

**BETWEEN**

**JUSTUS ASHEMBI MUTAHU ..... APPLICANT**

**AND**

**DPP ..... RESPONDENT**

**RULING**

1. The applicant herein was charged, tried, convicted and sentenced to fifteen (15) years' imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(4) of the [Sexual Offence Act](#) No. 3 of 2006.
2. The notice of motion filed by the applicant in this court seeks that the court be pleased order that his sentence runs from the date of arrest as per the provisions of Section 333(2) of the CPC. The applicant seeks relief of Article 23(3)(a) of the [Constitution](#) of Kenya which empowers the High court to provide him with a right to a least prescribed sentence and should be computed to from the time he lost his liberty.
3. The application is premised on the grounds on the face of it and an affidavit sworn by the applicant.
4. 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where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found.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.”

5. 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.”

6. 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.
7. I have perused the trial court proceedings and sentence. In the court’s pronouncement, the trial court magistrate did not address the time spent by the accused person in custody during trial.
8. According to the charge sheet, the applicant was arrested on 27.01.2022. The applicant remained in remand throughout the trial until the date of sentencing by the trial court on 28.07.2023.

**Disposition.**

9. The court finds that the application has merit. The same is allowed.
10. The sentence of 15 years’ imprisonment to commence from the date of arrest, being 27.01.2022 pursuant to section 333(2) of the [CPC](#).
11. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 10<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**S.N MBUNGI**

**JUDGE**

In the presence of:

Accused person – present

Court Prosecutor – Sirtuy

Court Assistant – Elizabeth Angong’a

