



**Esembwe v Republic (Miscellaneous Criminal Application
E001 of 2025) [2025] KEHC 7107 (KLR) (14 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 7107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
MISCELLANEOUS CRIMINAL APPLICATION E001 OF 2025**

JN KAMAU, J

MAY 14, 2025

BETWEEN

PATRICK ESEMBWE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Introduction

1. The Applicant filed an undated Notice of Motion application on 10th January 2025 that was supported by an affidavit. I noted that the Trial Court did not take into account the period that the Applicant stayed in custody when the trial was ongoing. The proceedings of the Trial Court only indicated that the Applicant was sentenced to five (5) years imprisonment on the ground that that was the minimum sentence of the offence of attempted defilement.
2. Section 333(2) of the *Criminal Procedure Code* Cap 75 Laws of Kenya is couched in mandatory terms that the period an accused person stays in custody while his trial is ongoing ought to be taken into account during the computation of his sentence.
3. Accordingly, I find that the Applicant's undated Notice of Motion application that was filed on 10th January 2025 was merited and is hereby allowed in terms of Prayer No (2) therein.
4. As the Applicant is remaining with a period of one (1) year and fifteen (15) days to complete his sentence, which is the same period he has sought in his said application, it is evident that he has completed his sentence.
5. I hereby direct that the Applicant be and is hereby released from custody forthwith unless he be held for any other lawful cause.
6. It is so ordered.



DATED AND DELIVERED AT VIHIGA THIS 14TH DAY OF MAY 2025

J. KAMAU

JUDGE

