



REPUBLIC OF KENYA



Julius v Office of the Director of Public Prosecutions (Criminal Miscellaneous Application E129 of 2024) [2025] KEHC 7310 (KLR) (15 May 2025) (Ruling)

Neutral citation: [2025] KEHC 7310 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
CRIMINAL MISCELLANEOUS APPLICATION E129 OF 2024**

WM KAGENDO., J

MAY 15, 2025

BETWEEN

JOSEPH NGALA JULIUS APPLICANT

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTIONS PROSECUTION

RULING

Preliminaries

1. The Applicant was charged with the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Acts* No. 3 of 2006. After a full trial, he was convicted and sentenced to 15 years from the date of conviction.
2. He has now filed an application seeking revision of sentence. He filed an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of sentence under the provision of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya.

Analysis and Determination

3. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody
4. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider the time already spent in custody during sentencing. The court has a duty to take into account the period an accused person had remained in custody during sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms. This was acknowledged by the Court of Appeal in “*Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR” and “*Bethwel*



Wilson Kibor v Republic [2009] eKLR” and more recently in the High Court case of “*Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others* [2021] eKLR”.

5. 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.
6. From the record, the Applicant was arrested on 26 th May, 2018. He was arraigned in court for take plea and was never released on bail during the entirety of his trial. He was convicted on 22 nd April, 2021. He, therefore, spent a period of 2 years, 10 months and twenty six days (2 years, 10 months and 26 days) in remand custody. From the record, it is clear that the period was not factored in during his sentencing by the trial court.
7. In “*Ahmed Abolfathi Mohamed v Republic* [2018] eKLR” the Court of Appeal held as follows;

“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 appellant’s sentence of imprisonment to run from the date of arrest on 19 th June 2012.” (emphasis mine)
8. Although the trial court, indicated that the said period had been considered, the court was not specific on what amount of time was considered. Guided by the law, the court is of the view that the application ought to be considered, as failure to do so would amount to denying the applicant a right due to the failure of the court to discharge an obligation bestowed upon it by law.

Conclusion and Disposition.

9. I thus allow the application. In the premises, I make the following orders:
 - i. The sentence of fifteen (15) years imprisonment on each count shall be computed less by 2 years, 10 months and 26 days and shall run from the date of conviction.

It is so ordered accordingly.

RULING DELIVERED THROUGH MICROSOFT TEAM VIRTUAL, SIGNED AND DATED AT MOMBASA THIS 15TH DAY OF MAY , 2025

.....
SIGNED BY: HON. LADY JUSTICE WENDY MICHENI

THE JUDICIARY OF KENYA.

MOMBASA HIGH COURT HIGH COURT CRIMINAL DATE: 2025-05-15 17:16:04

In the presence of:

M/s. Bebora, Court Assistant;

.....Mr. Ngiri... State Counsel;



.....Applicant

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