



REPUBLIC OF KENYA



**Kamindwa v Republic (Criminal Revision E217 of 2024)  
[2025] KEHC 9376 (KLR) (12 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 9376 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MAKUENI  
CRIMINAL REVISION E217 OF 2024**

**TM MATHEKA, J**

**MAY 12, 2025**

**BETWEEN**

**BENJAMIN MWAKAVI KAMINDWA ..... APPLICANT**

**AND**

**THE REPUBLIC ..... RESPONDENT**

**RULING**

1. The application before me is the one brought under section 333(2) of the *Criminal Procedure Code*. The applicant states that it is : In the matter of: Section 33(2) of the *Criminal Procedure Code*, Judicial Sentencing Policy Guidelines Para 7.10 & 7.11 and case law of Ahamad Abolfathi Mohammed & Another V Republic [2018] eKLR)
2. He states :
  3. That I am seeking revision of my sentence pursuant to section 333(2) of the *Criminal Procedure Code*.
  4. That if prayer sought above succeeds, I entreat this court for a non-custodial or community based sentence for the remaining time of sentence as enshrined in the *probation of offenders Act* Cap 64(5)(1)
  5. That, I wish to be present during the hearing of this application.
3. The application is supported by the affidavit of Benjamin Mwakavi Kamindwa the applicant sworn on an unknown date in July 2024.
4. He depones inter alia;



8. That, the learned trial magistrate erred in law and fact by not considering the period spent in remand custody as per section 333(2) of the *Criminal Procedure Code* before my conviction and sentence on 18<sup>th</sup> day of March, 2019.
  9. That , although the learned judge identified it while making determination but the same did not reflect in the judgment pursuant to the Judicial Sentencing Policy Guidelines para 7.10 & 7.11 and in the case law of Ahamad Abolifathi Mohammed & another vs Republic [2018]eKLR.
  10. That, in the above findings the honourable courts are reminded to consider time spent pendency of the trial by the accused persons.
  11. That I was apprehended to the Hon.Court on 13<sup>th</sup> day of April, 2017 charged, tried, the honourable court made a determination whereby I was found guilty, there after convicted and sentenced on 18<sup>th</sup> day of March, 2019.
  12. That, I the applicant was in remand custody for twenty-three(23) months and five(5) days(one year, eleven months & five days) period which I pray to this honourable court to factor in my sentence.
  13. That, I entreat this honourable court for non-custodial or community-based sentence for the remaining time of sentence as enshrined in the *Probation of Offenders Act* Cap 64 (5)(1).
5. I asked for the lower court file.
  6. I found that upon the trial and conviction, the appellant had filed Makueni HCCRA 105/2019.
  7. In the judgment the learned Judge observed;
 

The appellant upon conviction on 18<sup>th</sup> March 2019 was sentenced to twenty (20) years imprisonment. When asked to mitigate, all he told the court was that he was innocent. Section 8(3) *Sexual Offences Act* provides for a mandatory minimum sentence of twenty (20) years which was meted out on the appellant.
  8. The record also shows that the appellant first appeared for plea on 13<sup>th</sup> April 2017 and he was in custody up to the date of conviction and sentence. It's not shown whether this factor was considered at the time of sentencing. I will consider it.
  9. The Judge then proceeded to hold :
 

The upshot is that the appeal against conviction is dismissed. The sentence of twenty (20) years is set aside and substituted with a sentence of fifteen (15) years imprisonment from date of conviction.
  10. Evidently the issue was considered by Judge on the first appeal in the judgment delivered on 25/6/2020.
  11. In the circumstances the application to apply s. 333(2) of the CPC to the applicant's sentence is untenable, without merit. It is dismissed and the file closed.
  12. The applicant to serve his sentence but has the liberty to file appeal in the Court of Appeal.
  13. The Orders be served upon the Officer in Charge Makueni GK Prison for Compliance.
  14. Orders accordingly.



**DATED SIGNED AND DELIVERED THROUGH CTS THIS 12<sup>TH</sup> MAY 2025 MUMBUA T  
MATHEKA**

**JUDGE**

CA CHRISPOL

**SIGNED BY: LADY JUSTICE MATHEKA, TERESIA MUMBUA**

**THE JUDICIARY OF KENYA.**

**MAKUENI HIGH COURT**

**HIGH COURT DIV**

**DATE: 2025-05-12 17:28:25**

