



**Mwashe v Republic (Miscellaneous Criminal Application  
E043 of 2024) [2025] KEHC 6882 (KLR) (13 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6882 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARSEN  
MISCELLANEOUS CRIMINAL APPLICATION E043 OF 2024**

**JN NJAGI, J**

**MAY 13, 2025**

**BETWEEN**

**FRANCISCO CHENGO MWASHE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from original conviction and sentence by Hon.  
E.M Kadima, SRM, in Garsen Senior Principal Magistrate's  
Court Sexual offence Case No. E018 of 2018 delivered on 14/4/2022)*

**RULING**

1. The Applicant has filed an undated application seeking that the court makes an order that his sentence commences from the date of his arrest which is on 8<sup>th</sup> October 2018. He further seeks for an alternative sentence such as suspended sentence, community service order, probation, fine or any other the court may order.
2. The application was supported by the affidavit of the applicant in which he states that he was convicted for the offence of defilement contrary to section 8(1)(4) of the [Sexual Offences Act](#) and sentenced to serve 15 years imprisonment. That the trial court did not consider the period spent in custody as required by section 333 (2) of the [Criminal Procedure Code](#) when it sentenced him.
3. I have considered the application. The record of the trial court shows that the applicant was arrested on 9/10/2018 and appeared in court for plea on 11/10/2018. He was released on bond on the 12/2/2019. That means that he was in custody for a period of 4 months before he was released on bail. The trial court did not take into consideration the period spent in custody when sentencing the applicant as required by Section 333(2) of the [Criminal Procedure code](#). The trial court erred in that respect. The applicant is entitled to the period of 4 months being discounted.



4. The applicant further seeks for alternative sentence such as community service, probation or suspended sentence. However, the section of the *Sexual Offences act* under which the applicant was convicted provides for a mandatory minimum sentence of 15 years. This court has no power to substitute a minimum sentence with another sentence. In this I am guided by the Supreme Court decision in *Republic v Joshua Gichuki Mwangi (Respondent) & Initiative for Strategic Litigation in Africa & 3 others (Amicus Curie)*, Petition No.E018 of 2023 where it was held that the principles enunciated in *Francis Karioko Muruatetu & another v Republic* Petition No15 and 16 of 2017) KESC KLR (14/12/2017) do not apply in minimum sentences as set out in the *Sexual Offences Act*. That ground is therefore dismissed.
5. The only order that commends itself to me is to order the period of 4 months spent in custody before the applicant was granted bond be discounted from his sentence of 15 years.
6. I so order. The rest of the application is dismissed.

**DELIVERED, DATED AND SIGNED AT GARSEN THIS 13<sup>TH</sup> DAY OF MAY 2025**

**J. N. NJAGI**

**JUDGE**

In the presence of:-

Mr. Oluoch for Respondent present

Applicant: Present in prison at GK Prison Malindi

Court Assistant: Ndonge

