



Kyalo v Republic (Application E004 of 2025) [2025] KEHC 9122 (KLR) (19 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9122 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS**

APPLICATION E004 OF 2025

RC RUTTO, J

JUNE 19, 2025

BETWEEN

KENNEDY MBOYA KYALO APPLICANT

AND

REPUBLIC RESPONDENT

(Being sentence review arising from Kangundo Sexual Offence Case No. E002 of 2023)

RULING

1. The Applicant filed the present application seeking revision of sentence pursuant to the provisions of section 333(2) of the Criminal Procedure Code by taking into account the time spent in custody. He states that he was arrested on 06/01/2023 and sentenced on 16/11/2023.
2. The Applicant herein was charged with the offence of rape contrary to section 3 (1) (a) as read with section 3 (1) (b) of the Sexual Offences Act No 3 of 2006. He was convicted and sentenced to serve 10 years in prison.
3. The respondent did not oppose the application and left it to the court's discretion.
4. Section 333(2) of the Criminal Procedure Code provides as hereunder: -
 - “(2) 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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”
5. By virtue of the provisions of section 333(2) of the CPC, courts are obliged to take into account the period a person sentenced, spent in custody prior to the sentence. It therefore follows that the



requirement in section 333(2) of the [Criminal Procedure Code](#) to consider time spent in custody during trial, is mandatory.

6. After reviewing the record, this court notes that the trial court initially ordered the sentence to commence on 10th January 2023. Additionally, the applicant previously filed Criminal Miscellaneous Appeal No. E082 of 2023, seeking orders similar to those in the present application. However, in a ruling delivered on 29th January 2025 in the same matter, Justice E. Maina dismissed the application, affirming that the sentence was correctly set to begin on 10th January 2023—the date the applicant entered remand.
7. Since this issue has already been adjudicated by a court of equal jurisdiction, this court finds itself functus officio, meaning it no longer has the authority to review or reconsider the matter, as it has been conclusively decided. Consequently, no further action can be taken on this application. The application is hereby dismissed.
8. Orders accordingly.

DATED, SIGNED AND DELIVERED AT MACHAKOS THIS 19TH DAY OF JUNE, 2025

RHODA RUTTO

JUDGE

In the presence of;

.....Applicant

.....Respondent

Sam, Court Assistant

