



**Mwithi v Republic (Miscellaneous Criminal Application
E068 of 2025) [2025] KEHC 8473 (KLR) (17 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 8473 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIBERA
MISCELLANEOUS CRIMINAL APPLICATION E068 OF 2025**

DR KAVEDZA, J

JUNE 17, 2025

BETWEEN

JOSEPH MWITHI APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for sentence review against the sentence
delivered on 21st December 2022 at Kibera Chief Magistrates Court
Sexual Offences Case No. E069 of 2021 Republic v Joseph Mwithi)*

RULING

1. The applicant was charged with two counts of the offence of defilement contrary to section 8(1) as read with section 8(4) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve fifteen (15) years imprisonment.
2. He has filed the present application dated 1st April 2025 seeking sentence review. The grounds raised in support of the application are that the trial court and this court failed to consider the time spent in remand custody during the computation of his sentence.
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 take into account the time already spent in custody. The duty to take in account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the [Criminal Procedure Code](#) which is couched in mandatory terms 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 taken into account 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 11th June 2021 and was never released on bond. He was convicted on 21st December 2022. The period was not factored in during the computation of his sentence by the trial court.
7. In the premises, the application is allowed. The sentence imposed shall run from 11th June 2021 the date of the applicant's arrest pursuant to section 333(2) of the *Criminal Procedure Code*, Cap 75 Laws of Kenya.

Orders accordingly.

RULING DATED AND DELIVERED VIRTUALLY THIS 17TH DAY OF JUNE 2025

D. KAVEDZA

JUDGE

In the presence of:

Applicant Present

Mutuma for the Respondent

Tonny Court Assistant.

