



**Masiga v Republic (Criminal Miscellaneous Application
E052 of 2025) [2025] KEHC 11044 (KLR) (25 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E052 OF 2025**

A MABEYA, J

JULY 25, 2025

BETWEEN

EDGAR WELLINGTON MASIGA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 4/7/2024, Edgar Wellington Masiga was charged with the offence of child pornography contrary to section 24(1) (c) of the Computer Misuse and Cyber Crimes *Act No. 5 of 2018*. It was alleged that between 5/12/2023 and 2/7/2024 at an unknown place within the Republic of Kenya, he downloaded hundred obscene videos of harsh values depicting to be a child into his mobile phone.
2. After trial, he was found guilty convicted of the offence and sentenced to a fine of Kshs.500,000/- in default to serve three (3) years' imprisonment. The Court did not direct that the period in which the applicant was in custody during the trial be taken into consideration in computing the period of imprisonment as required by section 333(2) of the *Criminal Procedure Code* (CPC). The applicant was in custody between 4/7/2024 and 1/10/2024, a period of 2 months and 26 days.
3. By a Motion on Notice dated 4/7/2024, the applicant has sought that the provisions of section 333(2) of the CPC be taken into account in computing the period of his incarceration. The State did not oppose the application.
4. Section 333(2) of the *Criminal Procedure Code* provided that: -

“Subject to the provisions of section 38 of the *Penal Code* (Cap 63) 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. I have considered the entire record. I have also considered the proceedings of the trial Court, the judgment and sentence. As already stated, the Court did not comply with the provision of section 333(2) of the CPC.
6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of three (3) years shall take into consideration the period between 4/7/2024 and 1/10/2024 two (2) months and 26 days.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 25TH DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

