



**Ochola v Republic (Criminal Miscellaneous Application
E076 of 2025) [2025] KEHC 9536 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 9536 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E076 OF 2025**

A MABEYA, J

JULY 3, 2025

BETWEEN

VITALIS OCHOLA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 12/1/2018, Vitalis Ochola was charged with the offence of gang defilement of a girl contrary to section 10 of the *Sexual Offences Act* No. 3 of 2006. It was alleged that on 21/12/2017 at [Particulars Withheld] area, he and another had intentionally penetrated the vagina of J.A a child aged 17 years.
2. After trial, he was found guilty convicted of the offence and sentenced to 15 years' imprisonment. During the sentence, the court did not direct that the period when the applicant was in custody during the entire period of the trial be taken into consideration in computing the period of imprisonment. The record shows that the applicant was in custody between 12/1/2018 and 31/1/2019, a period of 1 year and 19 days.
3. By a Motion on Notice dated 9/5/2025, the applicant sought that the provisions of section 333(2) of the *Criminal Procedure Code* 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. The applicant was in custody throughout the period of trial.
6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of 15 years shall commence on 12/1/2018.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 3RD DAY OF JULY, 2025.

A. MABEYA, FCI Arb

JUDGE

