



REPUBLIC OF KENYA



**Kahindi v Republic (Criminal Revision E461 of 2023)  
[2023] KEHC 23066 (KLR) (5 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23066 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIAMBU  
CRIMINAL REVISION E461 OF 2023  
PM MULWA, J  
OCTOBER 5, 2023**

**BETWEEN**

**FRANCIS BARAKA KAHINDI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Arising from the original conviction and sentence in Kikuyu Criminal Case no. 33 of 2017)*

**RULING**

1. The applicant herein Francis Baraka Kahindi by his Notice of Motion application pleads with the court to consider the period spent in custody before conviction.
2. The applicant was charged with the offence of attempted defilement contrary to section 9(1) (2) of the *Sexual Offences Act* No. 3 of 2006. He was arrested on August 13, 2017, after a full trial judgment was delivered on December 1, 2022. He states that he was in custody during the trial.
3. The applicant avers he has been in prison for 6 years and 2 months and urges the court to consider the said period in computing the sentence of 10 years.
4. The applicant seeks intervention of this court to invoke the provisions of section 333(2) of the *Criminal Procedure Code* and consider the period he served in remand custody pending the hearing and disposal of the case.
5. Section 333(2) of the *Criminal Procedure Code* provides: -

“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 sub-section (1) has prior, to such sentence shall take account of the period spent in custody.”

6. Further, the Judiciary Sentencing Policy Guidelines provides that: “The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
7. The applicant was arrested on August 13, 2017, after a full trial judgment was delivered on December 1, 2022. He stated he was in custody during the trial. The applicant says he has been in prison for 6 years and 2 months. By virtue of section 333(2) of the *Criminal Procedure Code*, this duration ought to have been considered during sentencing.
8. The trial magistrate did not expressly consider the time spent in custody, thus this court will be guided by the provisions of section 333(2) of the *Criminal Procedure Code* and allow the application as prayed.
9. The sentence of 10 years to run from the date of his arrest which is on August 13, 2017.

**It is so ordered.**

**RULING** delivered virtually, dated and signed at **Kiambu**

This 5<sup>th</sup> day of **October** 2023.

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**P.M. MULWA**

**JUDGE**

**In the presence of:**

*Kinyua/ Duale* – Court assistants

Applicant in person – *present virtually from Kamiti*

*Mr. Gacharia* – for the Respondent

