



**Muse v Republic (Criminal Miscellaneous Application E060 of 2025)  
[2025] KEHC 14020 (KLR) (2 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14020 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL MISCELLANEOUS APPLICATION E060 OF 2025  
WM KAGENDO., J  
OCTOBER 2, 2025**

**BETWEEN**

**FRED WAWIRE MUSE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Revision of sentence in Criminal Case No. SO 60 of 2016 of 2020 at the Chief Magistrates Court Mombasa by Hon Kiage .G (SRM)) and HCA 100 OF 2019)*

**RULING**

1. By way of a Notice of Motion dated 17th April , 2025 brought under Sections 364 AND 333 (2) of the Criminal Procedure Code, the applicant moved the court for orders that the Court Reviews His Sentence Under Section 333(2) Of The CPC.
2. The background is that the applicant was charged, convicted and sentenced for the offense of sexual assault contrary to section 5 (1)(a)(ii)(2) of the sexual offences act no 3 of 2006.
3. The instant application is propped on grounds that the period the applicant spent in remand custody was not computed in the twenty (20) year sentence, whilst under Article 50 (2) (p) of the COK provides that an accused person should have the benefit of the least severe punishments of an offence.
4. The applicant relied on the authority in Jona & 87 others vs Kenya Prison Service & 2 others (2021) KEHC 457 (KLR).

**Analysis and Determination**

5. I have considered the application, noting that the same is not opposed by the respondent. Indeed, Article 50 (2) (p) (q) of the COK gives the Court the general power to review the decisions of the subordinate courts;



...

“(2) if convicted, to appeal to, or apply for review by, a higher court as prescribed by law.”

6. (q) Equally, this court’s revisionary jurisdiction is provided for under Section 362 of the [Criminal Procedure Code](#).

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”

7. Regarding the sentence imposed by the trial court, the appellant complained that the sentence failed to consider and factor in the period which he was held in lawful custody pursuant to Section 333 (2) of the [Criminal Procedure Code](#), wherein he was sentenced to 20years imprisonment.

8. Section 333 (2) of the [CPC](#) provides that:

(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.

9. The [Judiciary Sentencing Policy Guidelines](#) states that:

“7. 10: 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.”

10. It is trite that sentencing is at the discretion of the trial court, however the applicant was entitled to his right under Section 333(2) of the [CPC](#) and having not been accorded the same, the sentence herein was passed based on wrong principles and is therefore amenable to be interfered with by this court.

11. The applicant has as consequence pleaded that the period in remand be computed together with the time he has served, and the balance be served in a non-custodial sentence.

12. The application was not opposed.

13. I have confirmed from the trial record that indeed the applicant was first arraigned in court on 8/7/2016 and he remained in custody throughout the remand period.

14. He was sentenced on 24/5/ 2018 and the trial court did take into account the time he had spent in custody. That was improper.

15. Accordingly the application succeeds . The sentence should run from 08/07/2016.

16. It is so ordered



**DATED, SIGNED AND DELIVERED AT NAIROBI VIRTUALLY THIS 2ND DAY OF OCTOBER, 2025.**

**W.K. MICHENI JUDGE**

**In the presence of;**

**For The Applicant in person.....**

**For The Respondent. Mr Sirima**

**Signed by/for:**

**HON. LADY JUSTICE WENDY MICHENI**

**THE JUDICIARY OF KENYA**

**MOMBASA HIGH COURT**

**HIGH COURT CRIMINAL**

