



**Magamu v Republic (Criminal Miscellaneous Application  
E102 of 2024) [2025] KEHC 15536 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15536 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E102 OF 2024**

**JN KAMAU, J  
OCTOBER 30, 2025**

**BETWEEN**

**SETH INGAHU MAGAMU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was charged with two (2) Counts. On Count I, he was charged with the offence of attempted defilement contrary to Section 9(1) as read with Section 9(2) of the *Sexual Offences Act* Cap 63 (Law of Kenya) and the offence of assault causing actual bodily harm contrary to Section 251 of the Penal Code on Count II. He was also charged with alternative charge of committing an indecent act with a child contrary to Section 11(1) of the *Sexual Offences Act* Cap 63A (Laws of Kenya). He was convicted on both Counts. He was sentenced to seven (7) years imprisonment on Count 1 and three (3) years imprisonment on Count II. The Trial Court ordered that the sentences run concurrently.
2. Being aggrieved by the said decision, he filed his undated Notice of Motion on 5<sup>th</sup> November 2024, seeking a review of his sentence pursuant to Article 48 of *the Constitution* of Kenya, 2010 and Section 333(2) of *the Constitution* of Kenya.
3. He pleaded with court to consider the time he had spent in remand custody while reviewing his sentence. He averred that he was remorseful, rehabilitated and reformed. He pointed out that he was the sole bread winner of his family and sought for the court's leniency.
4. The Respondent was not opposed to his application and hence, both parties did not file their respective Written Submissions. This Ruling is therefore based on the Applicant's application and his affidavit evidence.



## Legal Analysis

5. Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides 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” (emphasis court).

6. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

7. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.

8. Notably, the Charge Sheet indicated that the Applicant was arrested on 4<sup>th</sup> December 2021. Although, he was granted bond, he did not seem to have posted the same. He was sentenced on 10<sup>th</sup> November 2022. A reading of the Trial Court’s decision indicated that the Trial Court did not consider the time the Applicant had spent in custody during trial. That was a period that ought to be taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

## Disposition

9. Accordingly, for the foregoing reasons, the upshot of this court’s decision was that the Applicant’s undated Notice of Motion application filed on 5<sup>th</sup> November 2024 was merited and the same be and is hereby allowed. However, his conviction and sentence be and are hereby upheld as they were both safe.

10. For the avoidance of doubt, the period between 4<sup>th</sup> December 2021 and 9<sup>th</sup> November 2022 that he spent in custody during trial be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

11. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 30<sup>TH</sup> DAY OF OCTOBER 2025**

**J. KAMAU**

**JUDGE**

