



**Miriti v Republic (Miscellaneous Criminal Application E005 of 2025)
[2025] KEHC 14796 (KLR) (15 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 14796 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT CHUKA
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2025**

RL KORIR, J

OCTOBER 15, 2025

BETWEEN

MARTIN MUTWIRI MIRITI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant filed the present Application dated 9th January 2025 seeking an order for the reduction of his sentence by the period he spent in pre-trial custody.
2. He set out the grounds that he was arrested on 6th March, 2020 and charged with the offence of defilement. That he spent a period of one year and four months in pre-trial custody which was not taken into consideration by the trial court in passing sentence. That he would serve an excessive sentence of the period was not included in the 8-year sentence.
3. The Applicant further stated that this court had the judicial power under Article 23(3) of *the Constitution* and section 333(2) of the Criminal Procedure Code to vary his sentence and reduce it by the period of pre-trial custody.
4. The Applicant filed a Supporting Affidavit whose averments mirror the grounds already set out above.
5. The Respondent opposed the Application through Submissions dated 23rd July, 2025. The gist of the Respondent's submissions was that the Application was not merited as failure by the trial court to explicitly state that it had taken into account the pre-trial custody did not invalidate the sentence. That the trial court in arriving at the sentence of 8 years' imprisonment took into account all circumstances and mitigating factors and departed from the mandatory minimum sentence of 10 years imprisonment provided by section 11(i) of the *Sexual Offences Act*.



Analysis and Determination:

6. The Applicant was tried, convicted and sentenced by Hon. J.M Njoroge, Chief Magistrate. As per the procedure provided by Section 362 of the Criminal Procedure Code, I called for and examined the trial record. Section 362 provides:-

“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.”

“364. In the case of a proceeding in a subordinate court the
(1) record of which has been called for or which has been reported for orders, or which otherwise comes to its knowledge, the High Court may -

(a) in the case of a conviction, exercise any of the powers conferred on it as a court of appeal by sections 354, 357 and 358, and may enhance the sentence;

(b) in the case of any other order other than an order of acquittal, alter or reverse the order.

(2) No order under this section shall be made to the prejudice of an accused person unless he has had an opportunity of being heard either personally or by an advocate in his own defence:

Provided that this subsection shall not apply to an order made where a subordinate court has failed to pass a sentence which it was required to pass under the written law creating the offence concerned.

(3) Where the sentence dealt with under this section has been passed by a subordinate court, the High Court shall not inflict a greater punishment for the offence which in the opinion of the High Court the accused has committed than might have been inflicted by the court which imposed the sentence.

(4) Nothing in this section shall be deemed to authorize the High Court to convert a finding of acquittal into one of conviction.

(5) When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.”



7. Prima facie there was nothing irregular about the Applicant's trial proceedings. Indeed, the Applicant has no complaint regarding the proceedings. With respect to sentence, the Applicant urges that he was in pre-trial custody for one and half years, a period that the trial court erred in not subtracting from his sentence.

8. My perusal of the record shows that the Applicant was charged on 9th March, 2020 and remained in custody through the trial period. In passing sentence, the trial court stated thus:-

The Court has considered the mitigation by the accused and the fact that he is a 1st offender. The offence charged is of serious nature and calls for a deterrent sentence against he accused and as a lesson to the general public with many thoughts of committing sexual offences. The court requested the case for a social inquiry report before sentence. The conclusion by the probation officer is not favourable to the accused. The officer concluded:

“.....The accused and the victim are cousins and the relationship makes other members of the community not to speak openly about the matter. There are also the sensitive rumours about the accused's poor health and status and alleged hearing benefits gotten form defiling a minor...”

9. The above shows that the court took into consideration the circumstances of the case as well as the mitigation of the Accused. With respect to the period spent in pre-trial custody, the trial court held thus:-

“The court has been guided by the provisions under the Penal Code relating to the punishment for such offenders. The Accused has been in custody for about one year and ½ before the determination of the case. I shall order that the accused be sentenced to serve Eight Years' (8) Imprisonment. Right of Appeal 14 days.” (Emphasis added)

10. My reading of the above shows that the court took into consideration the pre-trial custody. Other than what the court stated, an inference can be drawn from the fact that the court imposed an 8 year imprisonment in the face of a mandatory minimum sentence of 10 years' imprisonment. My deduction is that the court deducted the pre-trial custody period of one and a half years.

11. This case therefore was a good example of the court having taken into account the pre-trial custody and given real time effect in the sentence. As held in the case of DS Vs. Republic ([2022] KEHC 2502 (KLR), the court reinforced the importance of real-time effect under Section 333(2) Criminal Procedure Code, holding that:-

“The Court of Appeal in Ahamad Abolfathi Mohammed & Another vs. Republic [2018] eKLR. (see also Bethwell Wilson Kibor vs. Republic [2009] eKLR has also explained and buttressed he absolute need for the court to give real-time effect of Section 333(2) of the Criminal Procedure Code in sentencing. And, that merely stating that you have taken account of time spent in custody is not sufficient if the sentence does not show that the period which an accused has been held in custody prior to being sentenced had been taken into account.”

12. In the end, it is my finding that the Application lacks merit and is dismissed.

Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 15TH DAY OF OCTOBER, 2025.



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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of the Applicant acting in person and Ms Rukunga for the State; Muriuki (Court Assistant).

