

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS
MISC CRIMINAL APPL. E011 OF 2025

BETWEEN

HAJI

MISINGO

SWALEH.....APPLICANT

VERSUS

REPUBLIC.....

RESPONDENT

RULING

1. The appellant has approached this court seeking to have a second bite at the cherry a second opportunity to have his sentence reconsider under Section 333 (2) of the Criminal Procedure Code, specifically that the period and time spent in custody be considered.
2. This court notes that the appellant previously appealed against conviction and sentence of the trial court vide High Court Criminal Appeal Case No. E009 of 2022. Upon hearing the appeal rendered judgment in which it upheld the conviction and reviewed the sentence from life imprisonment to a 20year jail term. In doing so the court duly considered the period spent in custody being 2 years and 1 month.

3. Accordingly, this court first finds that the period spent in custody was already taken into account pursuant to section 333(2) of the Criminal Procedure Code. Secondly, given that this matter was already been conclusively determined by a court of concurrent jurisdiction, this court is functus officio and cannot proceed to determine the application before court for want of jurisdiction.
4. Application is hereby dismissed.

Dated, signed and delivered at Machakos this 22nd day of October, 2025

RHODA RUTTO
JUDGE

In the presence;

.....Applicant

.....Respondent

Selina Court Assistant