

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION NO. E055 OF
2025

LAVENDER AKOTH ADUKE.....
APPLICANT

VERSUS

REPUBLIC.....
....RESPONDENT

RULING

1. The Applicant herein, vide the Notice of Motion dated 24th April, 2025 August, 2025 seeks several prayers. Among the prayers sought is an order for the review of her sentence, so that the period that she served in prison as part of her sentence before being released on bail pending appeal is taken into account.

2. I have gone through the record of the lower court and note that upon being convicted, she was sentenced on 28th September, 2023 as follows:
 - a. On Count I, the Applicant was sentenced to serve 5 years imprisonment and in addition thereto, she was ordered to pay Ksh.5,384,379.43/- as compensation to the complainant.

- b. On Count II, the Applicant was sentenced to pay a fine of Ksh.200,000/- in default of which she would serve 2 years imprisonment.
 - c. On Count III, the Applicant was sentenced to pay a fine of Ksh.2,000,000/- in default of which she would serve 2 years imprisonment.
 - d. The trial court ordered that the above sentences would run consecutively.
3. The Applicant, being aggrieved by the conviction and sentence, preferred an appeal to this court vide *HCCRA No. E059 of 2023*. She was released on bail pending appeal on 13th December, 2023, after serving a portion of the sentence amounting to 76 days.
4. The Applicant's appeal was ultimately dismissed on 30th May, 2024 and the court cancelled her bond and ordered that the sentence resumes. It would however appear that the period of 76 days that she had already served was not factored in her committal warrant when her sentence resumed.
5. **Ms. Muema**, the learned Prosecution Counsel concedes that the said period of 76 days ought to have been considered as having been served, when her sentence resumed.

6. The foregoing being the position, I find that the application is merited in that respect only.
7. The result of all the above is that I proceed to allow prayer 3 of the Notice of Motion dated 24th April, 2025, only to the extent that the 76 days that the Applicant served as part of her prison sentence shall be deducted from her sentence as having been served.
8. With regard to the other prayers in the application, the same are declined as this court has no jurisdiction to grant them.
9. This file is closed.

DELIVERED (virtually) DATED and SIGNED this 11th November, 2025.

JOE M. OMIDO
JUDGE

APPLICANT: Present, virtually.

RESPONDENT: **Ms. Muema.**

COURT ASSISTANTS: **Mr. Ngoge & Mr. Juma.**