



**Murera v Republic (Miscellaneous Criminal Application E037 of 2024)  
[2025] KEHC 17030 (KLR) (19 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17030 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT CHUKA  
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2024**

**RL KORIR, J  
NOVEMBER 19, 2025**

**BETWEEN**

**JOSPHAT MWENDWA MURERA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Josphat Mwendwa Murera (Applicant) was charge with the offence of committing an indecent act with a child contrary to section 11(1) of the [Sexual Offences Act](#). He was alleged to have committed the offence on 28<sup>th</sup> December 2018 at Kithino Location, Tharaka South Sub-County. The victim of the offence was W.G. a child aged 7 years.
2. The Applicant was tried and convicted by Hon. S.M Nyaga (SRM). He was sentenced on 26<sup>th</sup> February 2020 to serve 10 years' imprisonment.
3. The Applicant has now filed the instant home-made undated Application seeking an order that the period he spent in pre-trial custody be factored into his sentence.
4. This court's revisionary jurisdiction is provided under section 362 of the [Criminal Procedure Code](#) which provides:-

“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.”
5. I called for and examined the trial record as mandated by law.



6. The record shows that the Applicant was presented before the trial court on 31<sup>st</sup> December 2018 for plea. He could not however take plea as there was no suitable interpreter in court. The plea taking was deferred to 3<sup>rd</sup> January 2019.
7. After facing many false starts, due to lack of an interpreter the trial commenced on 21<sup>st</sup> August, 2019 and concluded on 26<sup>th</sup> February 2020 when judgement was delivered and the Applicant duly convicted. He was sentenced on 11<sup>th</sup> March 2020 to serve the minimum sentence of 10 years imprisonment as provided by law.
8. The record shows no irregularity in the trial. The Applicant (then accused) was given time to offer his mitigation and the court considered the probation officer's pre-sentence report.
9. The Applicant has faulted the trial court for having not considered the period he spent in pre-trial custody. He has asked the court in this Application to consider the period and reduce his sentence proportionately. Indeed, the Applicant's undated submissions received in court on 24<sup>th</sup> September 2025 which I have considered, are on this one issue.
10. The Respondents vide submissions dated 17<sup>th</sup> July 2025, opposed the Application. They submitted that the trial court exercised discretion in sentencing the Applicant, after considering all relevant factors. They urged that failure by the court to explicitly indicate that it had considered pre-trial custody or to directly deduct that period from the sentence did not automatically render the sentence unlawful or defective.
11. The Respondents further urged that the Applicant had not demonstrated any prejudice suffered by such an omission as the sentence he was serving was lawful.
12. Section 333(2) of the [Criminal Procedure Code](#) provides:-
 

“Where the person sentenced has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”
13. In [Abamad Abolfathi Mohammed & another v Republic](#) [2018] eKLR, the Court of Appeal held that:-
 

“Taking into account the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody.”
14. Further, in [DS v 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 [Abamad Abolfathi Mohammed & another v Republic](#) [2018] eKLR. (see also [Bethwel Wilson Kibor v Republic](#) [2009] eKLR) has also explained and buttressed the 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 sentence had been taken into account.” (underline mine)
15. In the present case, the sentence meted by the trial court was the minimum mandatory sentence. The sentence did not take into account the pre-trial custody. There was no mention that the same had been taken into consideration and the sentence itself does not reflect that it had.



16. I have perused the trial record and found no evidence that the Applicant was out on bond during the pendency of the trial. The record shows that he was presented in court on 31<sup>st</sup> December, 2018 and remanded in custody. His sentence was pronounced on 11<sup>th</sup> March, 2020, meaning he was in pre-trial custody for 1 year and 3 months.
17. I am satisfied that the Application is merited only to the extent that the pre-trial custody is taken into consideration. While I shall not alter the sentence, I order that the 10-year imprisonment term be deemed to have commenced on 31<sup>st</sup> December 2018 being the date of pre-trial custody.

Orders accordingly.

**RULING DELIVERED, DATED AND SIGNED AT CHUKA THIS 19<sup>TH</sup> DAY OF NOVEMBER, 2025.**

.....

**R. LAGAT-KORIR**

**JUDGE**

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

