

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT KISUMU
CRIMINAL DIVISION
MISC. CRIMINAL APPLN. NO. E166 OF 2025

KEVIN OUMA NGESA APPLICANT

- VERSUS -

REPUBLIC RESPONDENT

R U L I N G

1. **KEVIN OUMA NGESA** ('the applicant') was charged with the offence of defilement of a 15-year-old contrary to *section 8(1) and 8(3) of the Sexual Offences Act*.
2. He was tried and found guilty. He was convicted of the charge and was sentenced to 20 years' imprisonment. The applicant appealed to this Court against the sentence only. By a Judgment made on **23/5/2025**, this Court (**B. M. Musyoka J**) dismissed the appeal in its entirety.
3. By an undated Motion lodged in this Court on **1/10/2025**, the applicant sought that the period spent in custody during the trial be taken into consideration in the calculation of his sentence.
4. It is clear that *section 333(2) of the Criminal Procedure Code* requires that the trial court does take into consideration the period an accused has spent in custody when meting out its sentence. That is the preserve of the trial court. In

the present case, the sentence was appealed against but this Court confirmed the same. The appeal having been dismissed by **Musyoka J** as aforesaid, this Court is bereft of any jurisdiction to disturb the sentence.

5. My view is that, it is only the Court of Appeal that can now disturb that decision. This Court cannot therefore interfere with that sentence.

6. Accordingly, the undated application is without merit and is hereby dismissed.

It is so ordered.

DATED and **DELIVERED** at Kisumu this **26th** day of **November, 2025**.

A. MABEYA, FCI Arb

JUDGE