



**Simani v Republic (Criminal Miscellaneous Application E064 of 2024)  
[2025] KEHC 17399 (KLR) (25 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 17399 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E064 OF 2024  
JN KAMAU, J  
NOVEMBER 25, 2025**

**BETWEEN**

**DENNIS SIMANI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with the offence of committing an indecent act with an adult contrary to Section 11(A) of the *akn ke act 2006 3 Sexual Offences Act* No 3 of 2006. He was convicted and sentenced to five (5) years imprisonment.
2. On 15<sup>th</sup> May 2024, he filed the Notice of Motion application dated 6<sup>th</sup> May 2024 seeking an order that the period of one (1) year, two (2) months he spent in remand from 18<sup>th</sup> May 2022 to 10<sup>th</sup> July 2023 be considered as part of his sentence.
3. The Respondent noted that the Applicant's application was brought under Section 333(2) of the Criminal Procedure Code but that the Applicant had also brought it under the Civil Procedure Rules. In the premises, it urged the court to dismiss the same.
4. Both parties did not file their respective Written Submissions. This Ruling is therefore based on the Applicant's application and his affidavit evidence.

**Legal Analysis**

5. This court noted the Respondent's argument that the Applicant had also brought the application herein under Civil Procedure Rules. However, as the Applicant was a layman, this court dealt with the application as drafted because Article 159(2)(d) of *akn ke act 2010 constitution the Constitution of Kenya, 2010* mandates courts to administer justice without undue regard to procedural technicalities.



6. Notably, Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides that:-

“Subject to the provisions of section 38 of the Penal Code (cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody” (emphasis court).

7. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

(ix) Time already spent in prison by the convict...”

8. The requirement under Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs Republic* [2018] eKLR.

9. Notably, the Applicant was arrested on 18<sup>th</sup> May 2022. Although, he was granted bond, he did not seem to have posted the same. He was sentenced on 10<sup>th</sup> July 2023. A reading of the Trial Court’s decision showed that it did not take into account the period he spent in remand during trial. This was a period that ought to be taken into account while computing his sentence.

### **Disposition**

10. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated 6<sup>th</sup> May 2024 and filed on 15<sup>th</sup> May 2024 was merited and the same be and is hereby allowed.

11. It is hereby ordered that the period between 18<sup>th</sup> May 2022 and 9<sup>th</sup> July 2023 that the Applicant spent in custody during trial be and is hereby taken into account while computing his sentence in accordance with Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).

12. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 25<sup>TH</sup> DAY OF NOVEMBER 2025**

**J. KAMAU**

**JUDGE**

