



REPUBLIC OF KENYA



KENYA LAW
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**JOO v Republic (Criminal Revision E042 of 2025)
[2025] KEHC 18466 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18466 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION E042 OF 2025
BM MUSYOKI, J
DECEMBER 11, 2025**

BETWEEN

JOO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for review of sentence in the Chief Magistrate's
Court at Thika criminal case number 52 of 2020 dated 4-04-2022)*

RULING

1. The applicant was charged and tried by the lower court with offences of defilement contrary to Section 8(1) as read together with Section 8(4) of the *Sexual Offences Act* and deliberate transmission of HIV contrary to Section 26(1)(a) of the same *Act*. He also faced an alternative count of committing an indecent act with a child contrary to Section 11(1) of the same *Act*. He was on 4-04-2022 sentenced to serve fifteen years in jail.
2. The applicant has brought this application asking the court to review the sentence by ordering that the term he spent in remand during the trial be taken into account and ordered as part of the sentence. The respondent represented by Miss Sanita told the court that it was not opposed to the application as it is true that the trial court did not take into account the period the applicant spent in remand.
3. I have gone through the record of the lower court and established that the applicant was arrested on 29-06-2020. It is not disputed that the applicant was in custody from the time of his arrest. Section 333 of the *Criminal Procedure Code* provides as follows;
 1. A warrant under the hand of the judge or magistrate by whom a person is sentenced to imprisonment, ordering that the sentence shall be carried out in any prison within Kenya, shall be issued by the sentencing judge or magistrate, and shall be full authority to the officer in



charge of the prison and to all other persons for carrying into effect the sentence described in the warrant, not being a sentence of death.

2. 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.’

4. While passing the sentence the trial court did not expressly state when the term should start running. That could by provision of Section 333(1) aforesaid be interpreted by the prison authorities to mean that the sentence would start running from the date of the sentence which would mean that the time spent in remand shall be in addition to the fifteen years. Considering that the applicant was in remand for about two years, he would by the time of completion of the term of fifteen years have been stripped of his liberty for seventeen years.
5. Upon evaluation of the supporting affidavit and considering the provisions of the Section 333(2) of the *Criminal Procedure Code*, I find that the application is merited and the same is allowed. I proceed to make the following orders;
 - a. The sentence of fifteen years imposed on the applicant in Thika Chief Magistrates’ Court criminal case number 52 of 2020 shall run from 29-06-2020.
 - b. There shall be no orders as to costs.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF DECEMBER 2025.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

Ruling delivered in presence of the applicant in person logged in from Kamiti Maximum Prison and Miss Torosi for the respondent.

