

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

MISC. CRIMINAL APP. NO. E057 OF 2025

CHARLES KALUME FRANCIS.....APPELLANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

1. The Applicant has filed an undated application seeking that the period spent in custody awaiting trial be taken into account as required by Section 333(2) of the Criminal Procedure Code. The same requires a court when sentencing an accused person who has been in custody to take into account the period spent in custody awaiting trial.
2. The application is supported by the affidavit of the Applicant in which he depones that he was sentenced to serve 20 years imprisonment over a charge of defilement. That the trial court in meting out the sentence did not adhere with the provision of Section 333(2) of the Criminal Procedure Code which will result in him serving an excessive sentence. That a failure to consider the same was a violation of his right to fair trial.
3. This court called for the lower court's file. The court record indicates that the Applicant was arrested on 28/3/2015 and arraigned in court on 30/3/2015. He was

sentenced on 19th May 2016. The Court record indicates that he was in prison custody throughout the trial which is a period of close to 14 months.

4. The provisions of Section 333(2) are mandatory. The Applicant was entitled to the said period being taken into account when he was sentenced. The trial magistrate did not do so. This was a misdirection on the part of the trial magistrate that this court is obligated to correct by way of revision.
5. In view of the foregoing, I order that the sentence of 20 years imprisonment on the Applicant, Charles Kalume Francis in Lamu Principal Magistrate's court Criminal Case No. 80 of 2015 commences from the date of his arrest i.e 28th March 2015.

Delivered, dated and signed at GARSEN this 17th day of February 2026.

J. N. NJAGI

JUDGE

In the presence of:

Miss Ochola for Respondent

Appellant - Present in person at Shimo la Tewa GK Prison

Court Assistant: Rahma