

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

MISC. CRIMINAL APPLICATION. NO. E051 OF 2025

MBARAK HAMISI MASO.....

APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

1. The Applicant herein was jailed for 40 years for defiling a child under the age of 11 years. He has now filed an application dated 23rd November 2025 seeking for orders that:

- 1) The court revisits the sentence imposed on him of 40 years for it being harsh and excessive.
- 2) That the court to consider the time spent in custody pursuant to Section 333(2) of the Criminal Procedure Code.
- 3) To give an order for re-hearing on mitigation.

2. The Applicant had filed a similar application for review of sentence that was dismissed by this court vide a ruling delivered on 11th July 2025. The prayer for review of sentence in this application is an abuse of the process of the court and is thereby dismissed.

3. I have considered the application in regard to pre-trial custody. I have perused the file of the lower court. The same indicates that the Applicant was arrested on 22nd June 2021 and arraigned in court on the 28th June 2021. He was sentenced on 31st May 2022. He was in custody throughout the trial which was a period of close to one year.
4. Section 333(2) of the Criminal Procedure Code requires the court when sentencing an accused person who has been in custody awaiting trial to take into account the period spent in custody. The trial court in sentencing the Applicant did not state whether it had taken into account the period spent in custody. The provisions of Section 333(2) of the Criminal Procedure Code are mandatory. It was a misdirection on the part of the trial court not to consider the pre-trial custody when sentencing the Applicant. This court is obligated to correct such an error by way of revision.
5. Consequently, I order that the sentence imposed on the Applicant to commence from the date of his arrest, i.e on 22nd June 2021.
6. Orders accordingly.

Delivered, dated and signed at GARSEN this 11th day of March 2026.

**J. N. NJAGI
JUDGE**

In the presence of:

Mr. Oluoch for Respondent

Applicant: Present virtually at G.K. Prison Malindi

Court Assistant: Rahma

Original