



REPUBLIC OF KENYA



**KENYA LAW**  
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**Charo v Republic (Criminal Revision E206 of 2025)  
[2026] KEHC 3466 (KLR) (5 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3466 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E206 OF 2025  
WM KAGENDO., J  
MARCH 5, 2026**

**BETWEEN**

**MACLEANS MWACHIWE CHARO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before the Court is an undated application seeking revision of the sentence imposed in SPM SO Case No. 110 of 2018 and an order that the period spent in custody since the appellant's arrest on 5 July 2018 be included in the sentence.
2. In his undated supporting affidavit the appellant states that he was convicted of defilement contrary to section 8(1) and (3) of the SOA Cap. 63A in the above trial and sentenced to fifteen years' imprisonment. He seeks an order that the remand period be treated as part of the sentence.

**Analysis and Determination**

1. In *Martin Mavuti Kituyi v Republic* HCCR Revision No. 27 of 2013 this Court observed: "... the very nature of revision as a discretionary remedy explains the policy underpinnings of section 364(5) of the Criminal Procedure Code; that revision should not be a substitute for an appeal whatsoever or insisted upon by a party who has not filed an appeal where one was provided for. Revision primarily serves to put right instances where a finding, sentence, order or proceedings of a lower court are tainted by incorrectness, impropriety, illegality or irregularity..."



2. On the question of counting remand as part of the sentence, section 333(2) of the Criminal Procedure Code provides: “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.”
3. An express obligation to give meaningful effect to section 333(2) was considered in *Ahamad Abolfathi Mohammed & Another v Republic* [2018] eKLR, where the court held that merely stating that the period in custody was “taken into account” while ordering the sentence to run from the date of conviction does not satisfy the statutory requirement; the period already spent in custody must be considered so that the imposed sentence is reduced proportionately.
4. This Court has original and unlimited jurisdiction, including statutory interpretation. Section 333(2) is selfoperative. Accordingly, the Court orders that the fifteen years’ sentence commence from 5 July 2018, the date of arrest indicated in the charge sheet.
5. A copy of this ruling shall be served on the Officer on charge Shimo La Tewa Maximum Gk Prison Mombasa.
6. It is so ordered.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS**

**...5TH..... dAY OF ...MARCH ..... 2026.**

**HON. LADY JUSTICE W. K. MICHENI JUDGE**

In the presence of:

The Applicant in person Mr. Sirima For the State Bebora, Court Assistant

SIGNED BY/FOR:

**HON. LADY JUSTICE WENDY MICHENI**

**THE JUDICIARY OF KENYA.**

**MOMBASA HIGH COURT**

**HIGH COURT CRIMINAL**

DATE: 2026-03-08 22:22:13

