

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT GARSEN

MISC.CRIMINAL APPLICATION. NO. E031 OF 2025

ISSACK MUTUKU MUSYOKI.....

APPLICANT

VERSUS

REPUBLIC.....

.....RESPONDENT

RULING

1. This court on 11th July 2025 delivered a ruling in which it rejected an application by the applicant seeking for review of his 20 years sentence. He has now filed another application seeking time spent in custody awaiting trial be factored in his sentence pursuant to Section 333(2) of the Criminal Procedure Code that requires a court when sentencing an accused person who has been in custody during trial to take into account the time spent in custody.
2. I have perused the record of the trial court. The record indicates that the applicant was arrested on 8/7/2015 and arraigned in court on the 13th July 2015. He was in custody throughout the trial and was sentenced on 28/6/2016. He was thus in custody awaiting trial for a period of almost one year (in fact 10 days shy of a full year). The provisions of Section 333(2) of the Criminal Procedure Code are in mandatory terms and the period spent in custody ought to have been taken into account when

sentencing the applicant. The trial court never stated that it had done so when it sentenced the accused to serve 20 years imprisonment. This is an error that this court is mandated to correct under its supervisory powers of subordinate courts by virtue of the provisions of Section 362 of the Criminal Procedure Code.

3. Accordingly, I find the application herein to be merited. I order that the sentence of 20 years imprisonment imposed on the applicant in Hola Resident Magistrate's Court Criminal Case no 209 of 2015 commences from the date of the applicant's arrest, i.e on 8th July 2015.

Delivered, dated and signed at GARSEN this 23rd day of February 2026.

**J. N. NJAGI
JUDGE**

In the presence of:

Miss Ochola for Respondent

Appellant - Present in person at G.K. Prison Malindi

Court Assistant: Rahma