



**Republic v Hamisi (Criminal Case E165 of 2025)
[2025] KEMC 310 (KLR) (11 November 2025) (Judgment)**

Neutral citation: [2025] KEMC 310 (KLR)

**REPUBLIC OF KENYA
IN THE LAMU LAW COURTS
CRIMINAL CASE E165 OF 2025
FM MULAMA, RM
NOVEMBER 11, 2025**

BETWEEN

REPUBLIC PROSECUTOR

AND

DAVID KATANA HAMISI ACCUSED

JUDGMENT

A. Background.

1. The accused is charged with the offence of escape from lawful custody contrary to section 123 as read with section 36 of the Penal code. The particulars were such that on the 22nd July 2025 at around 1350hours at GK Hindi Prison being in lawful at GK Hindi Prison the accused escaped from the said custody.
2. 3 witnesses were called by the state to prove the charge against the accused and was subsequently placed on his defence and in his defence he gave a sworn evidence and closed his case.

The Prosecution’s case.

3. It is the evidence of Pw 1 Inspector Daniel Musyoka an inspector at Hindi GK Prison stated that on the material date at 1415 hours while supervising the accused, the accused person asked for permission to respond to a call of nature. The accused was a convict having been convicted for 3 years and was serving his sentence.
4. Pw 1 stated that upon the request to respond to call of nature, he instructed PC Dube to escort him to the toilet and while on their way the accused took off into the bushes and a search mission started and he was later arrested with the help of other police formations at around Milihoi area.



5. Pw 1 further produced the committal warrant indicating that he was actually serving a custodial sentence and he identified the accused as the prisoner who escaped from jail. Pw 2 was the arresting officer who confirmed to have been the one who arrested the accused.

Defence case

6. In his sworn testimony the accused distanced himself from the events of that day but confirmed that indeed he was an inmate at Hindi prison and while at work he sought for permission to respond to a call of nature and after responding to the call of nature, he saw monkeys and he decided to chase them away and while at it went inside the bush and on his way back he lost his way and he decided to climb on top of a tree in order to find his location and that is when he heard noises from vehicles and started walking towards the road.
7. The accused further stated that he did not make his way to the road and he climbed another tree and slept on the tree until the following morning and again he started his journey but he got tired and slept until when he was arrested. He ended his testimony by asking for forgiveness since he never intended to escape from custody because he got lost.

B. Issue For Determination.

8. This court has identified 2 issues for determination.
 - a. Whether the accused was an inmate at Hindi GK Prison hence in lawful custody.
 - b. Whether the accused escaped from lawful custody.

C. Analysis And Determination.

Whether the accused was an inmate at Hindi GK Prison hence in lawful custody.

9. The prosecution through Pw 1 produced a committal warrant as Pexh 1 which confirms that indeed the accused was an inmate at Hindi Prison. The accused in his defence admits that indeed he was an inmate and serving a sentence.
10. It therefore goes without saying that by his own admission supported by the committal warrant the accused was indeed an inmate at Hindi Prison and as such in lawful custody.

Whether the accused escaped from lawful custody.

11. It is the evidence of Pw 1 that upon request by the accused to attend to a call of nature, he tasked PC Dube to escort him to the toilet and after he was done with the call of nature, the accused escaped into the bush and that is how his search was initiated.
12. The accused in his defence admitted to have gone to a call of nature and thereafter he saw monkeys and he decided to chase them away. He does not state what wrong or the type of destruction the monkeys were doing that made him decide to chase them away. In essence there was nothing that provoked him to chase them away and if they were destructive then PC Dube would have chased them away.
13. I do find his line of defence as a desperate attempt to avoid criminal liability and as such I proceed to dismiss the same.
14. The evidence by the state is unshaken and all point towards a deliberate attempt by the accused to escape from lawful custody and he indeed escaped from custody and had to be arrested after a search was mounted.



15. In the end I do make a finding that indeed the accused escaped from lawful custody.

D. Conclusion And Disposition.

16. It is therefore my finding and I so hold that the prosecution proved beyond reasonable doubt that the accused person committed the offences he has been charged with.

17. The net effect being that the accused person is found guilty for the offence of escape from lawful custody contrary to section 123 as read with section 36 of the penal code and he is accordingly convicted in that count under section 215 of the CPC.

18. Orders accordingly.

DATED, SIGNED AND DELIVERED AT LAMU LAW COURTS THIS 11TH DAY OF NOVEMBER 2025

F.M. MULAMA

RESIDENT MAGISTRATE

In the presence of:

Peter Birir -DPP

Court Assistant:- Fathiya Loo.

David Katana Hamisi

