



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chege v Republic (Criminal Revision E074 of 2025)  
[2026] KEHC 4690 (KLR) (13 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 4690 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
CRIMINAL REVISION E074 OF 2025  
RN NYAKUNDI, J  
APRIL 13, 2026**

**BETWEEN**

**PAUL KINYANJUI CHEGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before this Court is a Notice of Motion which seeks the following orders:
  - a. That this application be certified urgent and be admitted to be heard on priority basis.
  - b. That this honorable Court do note that the Applicant has served a substantial part of his sentence.
  - c. That this Honorable Court do order that the Applicant serves the remaining part of his sentence under non-custodial orders.
  - d. Any other order(s) this honorable Court will be pleased to make in the circumstances of this matter pursuant to Section 35 of the Penal Code.
2. Which application is made in the following grounds:
  - a. That the Applicant has no pending appeal before the Court of Appeal in respect of Cr. Case No. 8387 of 2007 at Eldoret CM's Court.
  - b. That the Applicant has been in custody from the date of arrest, and that his sentence of 30 years imprisonment subject to Section 333(2) of the CPC and Section 46 of the *Prisons Act* respectively qualifies him for non-custodial orders for the remaining part of his sentence which is less than 2 years.



- c. That in the spirit of prison decongestion, and in the Applicant's mitigation on record, the Applicant qualifies to be sentenced to a reduced sentence or to a non-custodial sentence for the remaining part of his sentence.
  - d. That it is in the interest of justice this application be allowed as prayed.
3. The application is supported by the affidavit sworn by the Applicant who deposed as follows:
- a. That in respect of Cr. Case No. 8387 of 2007 at Eldoret CM's Court where I was charged, tried and convicted of offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) and sentenced to 30 years imprisonment on 20/12/2007.
  - b. That conviction and sentence of 30 years imprisonment by the trial Court was affirmed by the High Court on appeal vide HCCRA No. 37 of 2009 at Eldoret through a judgment dated 10/09/2009.
  - c. That I was arrested on 14/08/2007 for the offence convicted of and I have been in custody since then.
  - d. That I was arrested while young for the offence charged, and I urge this honorable Court to observe that the period already served from the date of arraignment (18) years could be sufficient imprisonment for offence.
  - e. That this honorable Court has jurisdiction to gauge the appropriateness of the Applicant to serve the remaining part of his sentence on probationary orders.
  - f. That I possess skills that I will benefit me and the society if given an opportunity through this application, as I am seeking an opportunity to be reintegrated to the society while I am still energetic and able to work.
  - g. That I urge this honorable Court to consider my good character on record of 18 years in custody, by dint of Section 56 of the [Evidence Act](#) as a relevant factor to grant the orders sought in the application.
  - h. That this honorable Court has limited original jurisdiction and wide discretionary powers to review the Applicant's sentence downwards considering emerging mitigation and order the Applicant to serve the remaining part of his sentence under non-custodial orders by dint of Section 35 of the Penal Code.

## Decision

4. The Applicant has invoked [the Constitution](#) for this Court to have a relook of the case in so far as the verdict is concerned. In view of the complexity of the issues raised I find it persuasive to summarize the provisions as laid down by the drafters of [the Constitution](#):
- 22(1) every person has the right to institute Court proceedings claiming that a right or fundamental freedom in the Bill of Rights has been denied, violated or infringed, or is threatened.
- 23(1) the High Court has jurisdiction, in accordance with Art 165, to hear and determine applications for redress of a denial, violation or infringement of, or threat to, a right or fundamental freedom in the Bill of Rights.
- 159(2) in exercising judicial authority, the courts and tribunals shall be guided by the following principles



- (a) justice shall be done to all. Irrespective of status.
- (b) justice shall not be delayed.

165(3) Subject to clause (5), the High Court shall have-

- (a) unlimited original jurisdiction in criminal and civil matters;
- (b) jurisdiction to determine the question whether a right or fundamental freedom in the Bill of Rights has been denied, violated, infringed or threatened
- (d) jurisdiction to hear any question respecting the interpretation of this Constitution including the determination of-
  - i. The question whether any law is inconsistent with or in contravention of this constitution;
  - ii. The question whether anything said to be done under the authority of this Constitution or of any law is inconsistent with, or in contravention of, this Constitution;
  - iii. Any matter relating to Constitutional powers of State organs in respect of county governments and any matter relating to the Constitutional relationship between the levels of government; and
  - iv. a question relating to conflict of laws under Art 191.
- (6) The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.
- (7) For the purposes of clause (6), the High Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice.

258(1) every person has the right to institute Court proceedings, claiming that this Constitution has been contravened, or is threatened with contravention.

5. The Applicant in this matter seems also to have moved the Court under Section 362 of the Criminal Procedure Code and Section 333(2) of the same Code. In this respect the Courts draw its jurisdiction under Art 165 (6) (7) of *the Constitution* as follows:

- (6) The high Court has supervisory jurisdiction over the Subordinate Courts and over any persons, body or authority exercising a judicial or quasi-judicial function, but not over a Superior Court.
- (7) For the purposes of clause (6), the high Court may call for the record of any proceedings before any subordinate Court or person, body or authority referred to in clause (6) and may make any order or give any direction it considers appropriate to ensure the fair administration justice.

6. A Constitution is an exercise in balancing of the individual against the democratic rights of the majority. On the one hand, the fundamental rights and freedoms of the individual must be entrenched against future legislative action if they are to be properly protected; on the other hand, the powers of the legislature must not be unduly circumscribed if the democratic process is to be allowed its proper



scope. The balance is drawn by the Constitution. The judicial task is to interpret the Constitution in order to determine where the balance is drawn.

7. The established standard credit for presentence custody should be for each day of remand when the offender was not on bail pending the hearing and determination of his/her case. This seminal question on pretrial detention under Section 333(2) of the CPC empowers Judges and Magistrates to consider the time spent in custody before passing the final verdict as prescribed by the Legislature for that offence. This enhanced credit is typically to recognize the harshness of the remand conditions which often lack programming or rehabilitation of the offender. The purpose for credit for remand is intended to compensate for the dead time in remand which does not count towards parole eligibility in the same way as penitentiary sentence.
8. For those reasons there is merit to grant presentence credit for the Applicant computed to be 2 years. This means that the committal warrant to Prison be reviewed and amended to factor in the two-year pre-detention period. It is so ordered.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 13<sup>TH</sup> DAY OF APRIL 2026.**

.....

**R. NYAKUNDI**

**JUDGE**

Representation:

Ms Kirenge for State

