



**Nyambagera v Republic (Criminal Miscellaneous Application
E055 of 2025) [2026] KEHC 4429 (KLR) (10 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 4429 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYAMIRA
CRIMINAL MISCELLANEOUS APPLICATION E055 OF 2025**

TW CHERERE, J

MARCH 10, 2026

BETWEEN

SILAS NYABUTI NYAMBAGERA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Silas Nyabuti Nyambagera, by application dated 09th December 2025, seeks an order under Section 333(3) of the [Criminal Procedure Code](#) (hereinafter 'CPC') praying that his sentence of twenty (20) years imprisonment be backdated to the date of his initial arrest and detention.
2. The applicant was charged in Nyamira MCSO E028 of 2021 with the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#) No. 3 of 2006. He was convicted on 18th July 2024 and sentenced to a term of twenty (20) years imprisonment. He thereafter lodged an appeal against both conviction and sentence in HCCRA No. E034 of 2024 which was dismissed on 13th November 2025, and the conviction and sentence were upheld.
3. Section 333(2) of the [CPC](#) provides as follows:
 - (2) 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](#).
4. The operation of Section 333(2) [CPC](#) is discretionary, being triggered by the language 'unless the Court otherwise directs.' However, that discretion is constrained by the requirement that the sentence in question be lawful.
5. In the present case, the applicant sentenced to the prescribed mandatory minimum sentence of twenty (20) years imprisonment and the sentence is therefore legal and lawful.



6. The purpose of Section 333(2) is precisely to ensure that periods spent in remand custody are credited against the sentence imposed, thereby preventing an unjust compounding of the applicant's detention beyond the sentence pronounced by the court.
7. The applicant was arrested on 25th May 2021 and has remained in lawful custody continuously to the date of conviction on 18th July 2024.
8. Accordingly, the Notice of Motion dated 09th December 2025 is allowed. The sentence of twenty (20) years imprisonment imposed upon the applicant is hereby backdated to commence on 25th May 2021, being the date of the applicant's first detention in custody in connection with the offence.

DELIVERED AT NYAMIRA THIS 10TH DAY OF MARCH, 2026.

WAMAE.T. W. CHERERE

JUDGE

Appearances;

Court Assistant - Anita.

Applicant - Present.

For the DPP - Mr. Chirchir (SADPP).

