



REPUBLIC OF KENYA



KENYA LAW
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**Walo v Republic (Miscellaneous Criminal Application E038 of 2024)
[2025] KEHC 1134 (KLR) (27 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1134 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2024
JN ONYIEGO, J
FEBRUARY 27, 2025**

BETWEEN

YUSSUF MOHAMED WALO APPLICANT

AND

REPUBLIC RESPONDENT

*(Being a revision application against the sentence delivered on 07-03-2025 by
Hon. J. Omwange (SRM) in Garissa CM's court Criminal Case No. E038 of 2022)*

RULING

1. By un dated chamber summons, the applicant sought for orders that the period spent in remand custody pending trial be considered when computing the 7 years and 6 months' imprisonment sentence imposed on him, in Garissa Sexual Offences Case No E033 of 2022.
2. From the record, it is clear that the applicant was charged with the offence of rape contrary to section 3(1) as read with section 3(3) of the *Sexual Offences Act* No 3 of 2006. Particulars were that, on 18.08.2022, at 1730hrs in Bangale sub county within Tana River County he intentionally and unlawfully caused his penis to penetrate the vagina of Halima Abdullahi Abey without her consent.
3. During the hearing of the application, parties submitted orally with the applicant urging that the orders sought in the application be allowed as prayed. On the other hand, Mr. Owuor learned prosecution counsel appearing for the respondent submitted that if at all the trial court did not consider the time spent by the applicant in custody during the hearing of the matter, this court be at liberty to grant the same.
4. From the record, the applicant herein was convicted of the offence as charged and during mitigation, he urged the court to consider the duration that he had spent in custody and not to mention that he had five children who depended on him.



5. The trial court at the time of sentencing the applicant noted as follows:

“Considers(sic) mitigation and that the convicts(sic) is a 1st offender. I take into account the circumstances under which the offence was committed. Further the convict has been in custody for about 2 and ½ years. Under section 3(3)(sic), a convict of the offence herein and is the convict here is liable to imprisonment for a term not less than 10 years. In view of the all the above, I hereby sentence the convict to serve 7 and ½ years to jail”.

6. From the above, I strongly disagree with the applicant that the trial court did not factor in the 2 ½ years spent in custody. My understanding of the trial court’s statement is that a person guilty of an offence under section 3(3) of the *Sexual Offences Act* is liable upon conviction to imprisonment for a term which shall not be less than ten years. In the circumstance before the court, the trial court noted and took cognizance of the fact that the applicant had spent 2 ½ years in custody during the hearing of the matter and therefore, considered the same to arrive at the 7 ½ years meted out.

7. It therefore follows that the application herein lacks merit as the trial court considered the 2 ½ year period in the sentence meted out on 07.03.2024.

8. As such, the application herein is dismissed for want of merit.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 27TH DAY OF FEBRUARY, 2025.

J. N. ONYIEGO

JUDGE

