



REPUBLIC OF KENYA



KENYA LAW
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**Kariuki v Republic (Miscellaneous Criminal Case E128 of 2022)
[2025] KEHC 1404 (KLR) (26 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1404 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
MISCELLANEOUS CRIMINAL CASE E128 OF 2022
HI ONG'UDI, J
FEBRUARY 26, 2025**

BETWEEN

JAMES KABUE KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. James Kabue Kariuki the applicant was charged and convicted of the offence of rape contrary to section 3(1) (a) (c) and (3) of the *Sexual Offences Act* No 3 of 2006. He was sentenced to ten (10) years imprisonment on 31st August, 2022. This was in Molo Chief Magistrate's Court Sexual Offences Case No E046 of 2021.
2. He filed the undated notice of motion on 31st October, 2022 seeking revision of the sentence under Section 333 of the *Criminal Procedure Code*. This application is based on the fact that the trial court while sentencing him did not consider the period he had been in custody pending the hearing.
3. The application was heard orally whereby the applicant reiterated his plea as per the application. He told the court that he had not filed any appeal against the Judgment.
4. M/s Okok principal prosecution counsel in conceding the application submitted that the applicant was first arraigned in court on 16th March, 2021 when his plea was taken. He was sentenced on 31st August, 2021. All this time he had been in remand custody. The said period in custody was one (1) year plus five (5) months.
5. It was counsel's submission that the period the applicant spent in remand custody was not factored in by the trial court during the sentencing. She urged the court to review the sentence for it to start from 16th March, 2021 when the applicant was first remanded in custody.



6. I have considered the submissions by both the applicant and the respondent. I also have before me the original lower court record. It shows the date the applicant was arrested as 15th March, 2021. He was first presented to court on 16th March, 2021.
7. Further it confirms that the applicant was convicted and sentenced on 31st August, 2022. It also confirms as submitted by both the applicant and counsel that in sentencing the trial court did not take into account the period the applicant had been in remand custody.
8. My finding is that the trial court failed to comply with section 333(2) of the *Criminal Procedure Code*. I therefore review the sentence by directing that the said sentence runs from 15th March, 2021 when the applicant was first placed in police custody.
9. Orders accordingly.

DELIVERED VIRTUALLY DATED AND SIGNED THIS 26TH DAY OF FEBRUARY, 2025 IN OPEN COURT AT NAKURU.

H. I. ONG'UDI

JUDGE

