



**Majanga v Republic (Criminal Miscellaneous Application  
E014 of 2024) [2025] KEHC 2550 (KLR) (25 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 2550 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E014 OF 2024**

**JN KAMAU, J**

**FEBRUARY 25, 2025**

**BETWEEN**

**HILLARY MAJANGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with the offence of rape contrary to Section 3(1) (a) and (b) as read with Section 3(3) of the [Sexual Offences Act](#) No 3 of 2006. He was also charged with an alternative charge of the offence of committing an indecent act with an adult contrary to Section 11(A) of the [Sexual Offences Act](#). He was convicted of the main charge and sentenced to ten (10) years imprisonment.
2. On 24<sup>th</sup> January 2024, he filed Notice of Motion application dated 7<sup>th</sup> December 2023 seeking a review of his sentence. He urged the court to consider the period of two (2) years and seven (7) months that he had spent in remand during trial from 26<sup>th</sup> August 2019 when he was arrested as part of his sentence pursuant to Section 333(2) of the [Criminal Procedure Code](#). He pointed out that he was convicted on 27<sup>th</sup> February 2023.
3. He did not file any Written Submissions. The Respondent was not opposed to the said application and did not therefore file any written submissions. The Ruling herein is therefore based on his affidavit evidence.



## Legal Analysis

4. Section 333(2) of the *Criminal Procedure Code* provides that:

“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.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody (emphasis court)”.

5. This duty is also contained in the *Judiciary Sentencing Policy Guidelines* where it is provided that: -

“The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

6. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the *Criminal Procedure Code* was restated by the Court of Appeal in the case of *Abamad Abolfathi Mohammed & another v Republic* [2018] eKLR.

7. The Charge Sheet herein showed that the Applicant herein was arrested on 28<sup>th</sup> August 2019. Although he was granted bond, he did not seem to have posted the same. He was sentenced on 27<sup>th</sup> February 2023.

8. A reading of the Trial Court’s sentence showed that it did not take into account the time that he spent in remand before sentencing him. This court was therefore persuaded that this was a suitable case for it to exercise its discretion and grant the orders sought.

## Disposition

9. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated 7<sup>th</sup> December 2023 and filed on 24<sup>th</sup> January 2024 was merited with regard to his prayer pursuant to Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya) only.

10. It is hereby ordered and directed that the period the Applicant spent in custody between 28<sup>th</sup> August 2019 and 26<sup>th</sup> February 2023 be taken into account when computing his sentence in accordance with Section 333(2) of the *Criminal Procedure Code* Cap 75 (Laws of Kenya).

11. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 25<sup>TH</sup> DAY OF FEBRUARY, 2025.**

**J. KAMAU**

**JUDGE**

