



REPUBLIC OF KENYA



**Osman v Republic (Miscellaneous Criminal Application
E002 of 2025) [2025] KEHC 6590 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 6590 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E002 OF 2025**

**JN ONYIEGO, J
MARCH 26, 2025**

BETWEEN

AYUB OSMAN APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence delivered by Hon.
Lemayan(RM) on 14-04-24 in MCSO No. 13 of 2023 Dadaab PM's court)*

RULING

1. The applicant was charged with the offence of defilement contrary to Section 8(1)(3) of the [Sexual Offences Act](#). Particulars were that on 6th day of October 2023 in Fafi Sub-County within Garissa county, he intentionally and unlawfully caused his penis to penetrate the Vagina of F.M.S a child aged 15 years. He was further charged with committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No.3 of 2006.
2. Having denied the charge, the case proceeded to full trial consequences whereof he was convicted of the main count and sentenced to 20 years' imprisonment. Aggrieved by both the conviction and sentence, he appealed to the high court via Criminal appeal number E014 of 2024. The appeal was however dismissed on 21-11-2024 for want of merit.
3. Undeterred, he has now moved this court vide an undated notice of motion seeking the court to take into account the period spent in remand custody pursuant to section 333(2) of the CPC. In response, the respondent did not oppose the application.
4. I have considered the application before this court and the response thereof. It is trite that when sentencing an accused person, the trial court must take into account the period spent in remand custody pursuant to Section 333(2) of the [CPC](#). See [Bethwel Wilson Kibor vs Republic](#) (2009) e KLR



where the court of Appeal held that a trial court must take into account the specific period spent in remand custody before sentencing.

5. A perusal of the court record reveals that the court did consider the time spent in remand custody. In the circumstances, I do not find merit in the application. Accordingly, the application is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 26TH DAY OF MARCH 2025

J. N. ONYIEGO

JUDGE

