



**Mulwa v Republic (Criminal Revision E143 of 2024)
[2025] KEHC 3688 (KLR) (25 March 2025) (Ruling)**

Neutral citation: [2025] KEHC 3688 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MACHAKOS
CRIMINAL REVISION E143 OF 2024
EN MAINA, J
MARCH 25, 2025**

BETWEEN

ERIC MUTUNGA MULWA APPLICANT

AND

REPUBLIC RESPONDENT

(Review arising from the Sentence by Hon. D. Sure (P.M) at the Chief Magistrate's Court Kangundo in S.O. Case No. E010 of 2024 delivered on 17/10/2024)

RULING

1. The Applicant brings this application firstly under Section 333(2) of the [Criminal Procedure Code](#) which obligates a court which is sentencing an accused person to take into consideration the period the accused person may have spent in remand custody. The Applicant has also urged this court to order that he serves the remainder of his term by way of a non-custodial sentence. The remainder of the term being what will be remaining once we deduct the eight (8) months he spent in remand custody.
2. I have considered the application carefully. From the record of the lower court, the Applicant was charged with two offences namely – Causing an indecent Act Contrary to Section 6(b) of the [Sexual Offences Act](#) and Threatening to kill Contrary to Section 223(1) of the [Penal Code](#). The second charge arose from him threatening the victim of the sexual offence if she dared to report what he had done. He was found guilty, convicted and sentenced to imprisonment for five (5) years on each count but the sentences were to run concurrently. The sentence was imposed by the Hon. D. N. Sure, Principal Magistrate on 17/10/2024. The trial magistrate indicated that the sentence was to start running from 13/02/2024.
3. To quote his exact words:-

“Ruling



I have considered the mitigation and the circumstances of the offence. I have considered Section 6 and it provides a minimum sentence of 5 years. I will sentence the accused as follows:-

Count 1: The accused is sentenced to 5 years in jail.

Count 2: The accused is sentenced to 5 years in jail.

Sentence will run concurrently.

The sentence to start counting from 13/02/2024

D.N. Sure

(sign)

14 days right of appeal explained

(sign)

D.N. Sure (P.M)” (underlining mine)

4. Clearly, the period spent in custody was to be taken into account in computing the sentence which computation is to be done by the correctional facility where the Applicant is being held. He was arrested on 13/02/2024 and that is the date from which according to the learned trial magistrate, the sentence was to count. The application by the Applicant is therefore not merited and it is dismissed.
5. On the second limb for a non-custodial sentence, it is instructive that he was jailed for very serious offences and indeed the sexual offence carries a minimum sentence with which this court cannot interfere – see the case of *Republic v Mwangi, Initiative for Strategic Litigation in Africa & 3 others (amicus curiae)* Petition No E018 of 2023[2024] KESC 34[KLR] (12th July 2024) (Judgment).
6. The Application (undated Notice of Motion) filed by the Applicant is dismissed in its entirety.

It is so ordered.

RULING SIGNED, DATED AND DELIVERED VIRTUALLY ON THIS 25TH DAY OF MARCH, 2025.

E. N. MAINA

JUDGE

In the presence of:

Ms Kaburu for the ODPP

The Applicant in person

C/A: Wambua

