



**Itaba Alias Masiongo v Republic (Criminal Revision  
E415 of 2023) [2025] KEHC 5433 (KLR) (29 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5433 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E415 OF 2023  
SC CHIRCHIR, J  
APRIL 29, 2025**

**BETWEEN**

**SIMON ITABA ALIAS MASIONGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for the offence of defilement contrary to section 8 (1) as read with section 8(2) of the [Sexual Offences Act](#), No. 3 of 2006. He was sentenced to serve 10 years in jail.
2. He has now filed an application seeking revision of sentence supported by an Affidavit attached thereto. He has stated that the trial court failed to consider the time he spent in custody when computing his sentence , as required under the provisions of section 333(2) of the [Criminal Procedure Code](#).
3. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. Under the proviso to section 333(2) of the [Criminal Procedure Code](#) the court has a duty to take into account the period an accused person remained in custody during trial. The provision is gauged in mandatory terms. ( Also see the Court of Appeal decision in [Abamad Abolfathi Mobammed & Another v Republic](#) [2018] eKLR and [Bethwel Wilson Kibor v Republic](#) [2009] eKLR and more recently in the High Court case of [Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others](#) [2021] eKLR.
4. From the record, the applicant was arrested on 21<sup>st</sup> December, 2021. And was arraigned in court for plea- taking on 23<sup>rd</sup> December 2021. Though he was granted a bond of Kshs. 300,000/= with one surety of similar amount , he remained in custody throughout trial . He, therefore spent, 1 year 5 months and 16 days in custody prior to conviction . From the record, there is no indication that the trial magistrate took into account the said period .



5. The Revision powers of the high court is aimed at checking the correctness, legality or appropriateness of the orders , proceedings or sentences passed by the subordinate courts. ( Ref: section 362 of the *Criminal procedure code*). To the extent that the trial court did not comply with the proviso to section 333(2) of the *criminal procedure code* then the sentence was illegal , warranting the intervention of this court.
6. Consequently, the Application succeeds. The sentence of ten (10) years is varied to the extent that it is deemed to have taken effect from 23<sup>rd</sup> December 2021 being the date when the Applicant was first arraigned in court.

**DATED . SIGNED AND DELIVERED VIRTUALLY, AT ISIOLO, THIS 29<sup>TH</sup> DAY OF APRIL , 2025.**

**S. CHIRCHIR**

**JUDGE.**

In the presence of :-

Godwin Luyundi- Court Assistant

Simon Itaba- The Applicant .

Ms Kagai for DPP

