



**George v Republic (Miscellaneous Criminal Application  
E009 of 2025) [2025] KEHC 5002 (KLR) (25 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 5002 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E009 OF 2025**

**JN ONYIEGO, J**

**APRIL 25, 2025**

**BETWEEN**

**BONIFACE MBURU GEORGE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein was charged with the offence of defilement contrary to Section 145(1) of the penal code. Particulars were that in between 5<sup>th</sup> and 7<sup>th</sup> May 2005 at unknown time in Garissa township of Garissa district within the North Eastern province he had carnal knowledge of one MW a girl under 16 years.
2. He also faced an alternative count of indecent assault contrary to Section 144(1) of the penal code. Particulars were that, in between 5<sup>th</sup> and 7<sup>th</sup> May 2005 at unknown time in Garissa township of Garissa district within the North Eastern province he indecently assaulted one MW by touching her private parts a girl of age of 10 months.
3. Having denied the charge, he was tried, convicted and sentenced to 30 years imprisonment in respect of the main count.
4. Aggrieved by the said conviction and sentence, he appealed to high court Nairobi *vide criminal appeal number 115 of 2008*. The said appeal was dismissed on 25-03-2025 in its entirety.
5. Undeterred, he has now moved to this court under a notice of motion dated 19-03-2025 seeking revision of his sentence under section 333(2) of the CPC. Basically, he is seeking the court to take into account, the period spent in remand custody before his sentence. In response, the state did not oppose the same thus urged the court to consider the same.



6. I have considered the application herein which is not opposed. The application is seeking this court's intervention by considering the period spent in remand custody. It is trite that before imposing any sentence, a trial court must take into account the period spent in remand custody. This position is clearly captured under section 333(2) of the CPC.
7. The proviso to section 333(2) of the CPC requires the court to take into account the time spent in custody in sentencing. The said section 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.”
8. Court's obligation under Section 333(2) of the CPC has been explained in the Judiciary Sentencing Policy Guidelines (under clauses 7.10 and 7.11) thus:

“The provision 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.”
9. Superior courts have time and again emphasized that courts must give full effect to section 333(2) of the *Criminal Procedure Code*. See the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs. Republic* [2018] eKLR. (see also *Bethwel Wilson Kibor vs. Republic* [2009] eKLR).
10. A perusal of the trial court's record clearly show that the court did not take into account the period spent in remand custody. The appellant was arraigned before the trial court on 10-05-2005. He remained in custody till 24-11-2005 when he was sentenced. This period translates to 6 months and 19 days. Consequently, this period ought to have been considered. Accordingly, it is my finding that the application is merited and therefore allowed with orders that the period spent in remand custody shall be taken into account when computing sentence.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 25<sup>TH</sup> APRIL, 2025**

**J. N. ONYIEGO**

**JUDGE**

