



**Avaye v Republic (Criminal Miscellaneous Application
E057 of 2025) [2025] KEHC 9352 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9352 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E057 OF 2025**

A MABEYA, J

JUNE 30, 2025

BETWEEN

JOHN MUNYOLE AVAYE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 19/8/2015, John Munyole Avayewas charged with the offence of defilement of a girl contrary to section 8(1) (2) of the [Sexual Offences Act](#) No. 3 of 2006. It was alleged that on 17/8/2015 at Manyatta Area, Kisumu East District, he intentionally penetrated the vagina of M.J.D a child aged 10 years.
2. After trial, he was found guilty convicted of the offence and sentenced to 20 years' imprisonment. The applicant was in custody between 17/8/2015 and 21/6/2017, a period of 1 year and 10 months.
3. By an undated Motion on Notice, the applicant has sought that the provisions of section 333(2) of the [Criminal Procedure Code](#) be taken into account in computing the period of his incarceration. The State did not oppose the application.
4. Section 333(2) of the [Criminal Procedure Code](#) provided 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.”
5. I have considered the entire record. I have also considered the proceedings of the trial Court, the judgment and sentence. It seems that the provision of section 333(2) of the [Criminal Procedure Code](#) was not considered.



6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of 20 years shall commence on 17/8/2015.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 30TH DAY OF JUNE, 2025.

A. MABEYA, FCI Arb

JUDGE.

