



GON v Republic (Criminal Miscellaneous Application E032 of 2025) [2025] KEHC 9354 (KLR) (30 June 2025) (Ruling)

Neutral citation: [2025] KEHC 9354 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E032 OF 2025**

A MABEYA, J

JUNE 30, 2025

BETWEEN

GON APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 4/2/2019, GON was charged with the offence of Incest contrary to section 20(1) of the [Sexual Offences Act](#) No. 3 of 2006. It was alleged that on 20th and 30th December, 2018 at [Particulars Withheld] Sub County with Kisumu County, he intentionally penetrated the vagina of I.A.O, his daughter aged 13 years.
2. After trial, he was found guilty convicted of the offence and sentenced Life imprisonment. On appeal, the High Court reduced the sentence to 25 years’ imprisonment. The Court directed that the period when the applicant was in custody during the trial be taken into consideration in computing the period of imprisonment. The applicant was in custody between 4/2/2019 and 18/5/2020, a period of 1 year and 3 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, this Court’s judgment and sentence. Although the Court ordered that the period which the applicant spent in custody during the trial be taken into account, that was not reflected in the Warrant of Commitment.
6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of 25 years shall commence on 4/2/2019.

It is so ordered.

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

A. MABEYA, FCI Arb

JUDGE

