



REPUBLIC OF KENYA



**Hassan v Republic (Miscellaneous Criminal Application
E013 of 2025) [2025] KEHC 9459 (KLR) (30 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9459 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2025**

JN ONYIEGO, J

JUNE 30, 2025

BETWEEN

NOOR KORANE HASSAN APPLICANT

AND

REPUBLIC RESPONDENT

*(Being revision application against the sentence of Hon. C. Maundu
(CM) delivered on 06-06-2017 in criminal case number 76 of 2016)*

RULING

1. The applicant was charged with the offence of defilement c/s 8(3) of the [sexual offences Act](#) No.3 of 2006. Particulars were that on 8th day of January 2016 in Garissa Township within Garissa County, he intentionally and unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of MA a child aged 12 years.
2. He was also charged with an alternative count of committing an indecent act with a child C/S 11(1) of the [sexual offences Act](#) No.3 of 2006. Particulars were that on 8th day of January 2016 in Garissa Township within Garissa County, he intentionally and unlawfully touched the vagina of MA a child aged 12 years old.
3. Having pleaded not guilty to the charge, the matter proceeded to full trial and consequently, he was convicted and sentenced to serve 20 years imprisonment. He subsequently moved to this court seeking revision of his sentence. He urged the court to take into account the period spent in remand custody and that the court be lenient to him.
4. During the hearing, the respondent had no objection to the application. I have considered the application herein. The same is not opposed.



5. It is clear from the application that the applicant is not challenging conviction. He is simply seeking consideration of his entitlement under Section 333(2) of the CPC which provides that when imposing sentence, a court must take into account the period spent in remand custody. Similar position is echoed in the Judiciary sentencing policy guidelines 2023. This position was also espoused in the case of Bethwel Wilson Kibor vs Republic (2009)eKLR where the court reduced the sentence imposed to take care of the period spent in remand custody by the appellant prior to his sentence.
6. It is therefore the duty of the sentencing court to take into account the period an accused person has spent in custody since the time of arrest until the sentencing date. To omit that period will be prejudicial to the accused's or appellant's constitutional right to liberty.
7. I am fully aware that sentencing is at the discretion of the trial court and an appellate court would only interfere if the same is unlawful or illegal, arrived at upon considering irrelevant factors or failure to consider relevant factors or upon considering wrong legal principles or that the same is excessive. See Prosecutor vs Stephen Lesinko (2018) eKLR. I have carefully perused the court record herein. The applicant was arrested on 14-03-2023. He was arraigned before court the following day. He denied the charge but changed plea and pleaded guilty on 16-06-2023 when he was convicted and sentenced.
8. From the record, the trial court did not mention or comment about the period spent in custody from the date of his arrest to the date of sentence. The court clearly failed to consider an important factor under Section 333(2) of the CPC. The applicant stayed in custody for a period of 1 year, 5 months and 5 days which ought to have been factored into when computing sentence.
9. For the above stated reasons, I am persuaded to find that the application is merited and therefore allowed as prayed. Accordingly, the committal warrant shall be amended to reflect the period spent in custody. The appellant shall serve his sentence less 1 year, 5 months and 5 days.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY OF JUNE 2025

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J. N. ONYIEGO

JUDGE

