



**Ambuka v Republic (Criminal Miscellaneous Application  
E099 of 2024) [2025] KEHC 9152 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9152 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
CRIMINAL MISCELLANEOUS APPLICATION E099 OF 2024**

**JN KAMAU, J**

**JUNE 24, 2025**

**BETWEEN**

**GAMALIEL OPATI AMBUKA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant herein was charged with the offence of rape contrary to Section 3(1)(a)(c) (3) (sic) of the [Sexual Offences Act](#) No 3 of 2006. He had also been charged with an alternative offence of committing an indecent act with an adult contrary to Section 11(A) of the [Sexual Offences Act](#).
2. He was convicted of the main charge and sentenced to fifteen (15) years imprisonment.
3. Being aggrieved by the said decision, he lodged an appeal before this court in HCCRA No E005 of 2022 but the same was dismissed and his conviction and sentenced upheld.
4. On 29<sup>th</sup> October 2024, he filed the undated Notice of Motion application herein seeking an order that his sentence run from the date of arrest being 25<sup>th</sup> November 2019.
5. The Respondent was not opposed to his application and hence both parties did not file their respective Written Submissions. This Ruling is therefore based on the Applicant's application and his affidavit evidence.

**Legal Analysis**

6. Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya) 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 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” (emphasis court).

7. Further, the [Judiciary Sentencing Policy Guidelines](#) provide that:-

“The proviso 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.”

8. The requirement under Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in [Abamad Abolfatbi Mohammed & Another vs Republic](#) [2018] eKLR.

9. Notably, the Applicant was arrested on 26<sup>th</sup> November 2019. He was released on bond on 3<sup>rd</sup> December 2019. He was remanded again on 8<sup>th</sup> March 2022 and was sentenced on 23<sup>rd</sup> March 2022. A reading of the Trial Court’s decision showed that it did not take into account the period he spent in remand during trial. The period that he remained in remand as the trial was ongoing therefore ought to be taken into consideration while computing his sentence.

### **Disposition**

10. Accordingly, the upshot of this court’s decision was that the Applicant’s undated Notice of Motion application but filed on 29<sup>th</sup> October 2024 was merited and the same be and is hereby allowed.

11. For the avoidance of doubt, the period between 26<sup>th</sup> November 2019 and 3<sup>rd</sup> December 2019 and the period between 8<sup>th</sup> March 2022 and 22<sup>nd</sup> March 2022 be and are hereby taken into account while computing his sentence in line with Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).

12. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS 24<sup>TH</sup> DAY OF JUNE 2025**

**J. KAMAU**

**JUDGE**

