



**Anjere v Director of Public Prosecution (Criminal Revision  
E491 of 2024) [2025] KEHC 9004 (KLR) (24 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 9004 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
CRIMINAL REVISION E491 OF 2024**

**S MBUNGI, J**

**JUNE 24, 2025**

**BETWEEN**

**JACKSON OBUNYAKHA ANJERE ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

1. The applicant moved this Court vide an undated Notice of Motion brought pursuant to Sections 327(2), 346, 362, and 364 of the *Criminal Procedure Code* and Article 50(2)(q) of the *Constitution*. He seeks a downward revision of the 25-year sentence imposed on appeal in Kakamega HCCRA No. E028 of 2022, following his conviction in Butere Criminal Case No. 58 of 2020 for defilement under Section 8(1) as read with 8(2) of the *Sexual Offences Act*. He avers that he did not pursue a further appeal to the COA, and now invokes the Court's revisionary jurisdiction, relying on the principles set out in paragraph 50(e) and (f) of the Supreme Court decision in Constitutional Application No. 2 of 2011.
2. In his supporting affidavit, the applicant urges the Court to consider his rehabilitation, the time already served in custody, and the principle of equal treatment under the law. He prays that the sentence be reviewed in line with more lenient sentences imposed in similar matters, and that no costs be awarded against him on account of his indigence. He also expresses a desire to be present during the hearing of the application.
3. When the matter came up for hearing interpartes, the application was opposed by prosecution counsel, Ms. Osoro, who submitted that the applicant appealed to the High Court and the sentence was reduced to 25 years, and his only recourse if dissatisfied, was to appeal to the Court of Appeal. The applicant prayed for the court to take into account the time spent in custody during trial.
4. I have looked at the application, the court record and considered the oral submissions by both parties.



5. The applicant was charged with the offence of defilement of a six-year old girl contrary to section 8(1) (2) of the [Sexual Offences Act](#) No. 3 of 2006 and sentenced to life imprisonment by the trial court. Pursuant to a successful appeal to the High Court, his sentence was reduced to 25 years imprisonment.
6. The applicant seeks a further reduction of his sentence, arguing that the 25-year term imposed on appeal is excessive and disproportionate when compared to sentences in similar cases. He urges the court to consider his rehabilitation and time already served. However, this Court cannot sit on appeal over its own appellate decision rendered in Kakamega HCCRA No. E028 of 2022. Having already heard and determined the appeal on both conviction and sentence, the Court is now functus officio in so far as re-evaluating the merits of the sentence is concerned.
7. Nevertheless, the right to have the period spent in custody prior to conviction taken into account is a statutory and constitutional safeguard under Section 333(2) of the [Criminal Procedure Code](#), which the Court retains jurisdiction to enforce through revision. I note that while meting the sentence, the court did not take into account the time spent in remand during trial, whereas the High court directed that the sentence would run from the date of conviction.
8. According to The [Judiciary Sentencing Policy Guidelines 2023](#):

“Section 333 (2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody. Failure to do so impacts the overall period of detention which may result in a punishment that is not proportionate to the seriousness of the offence committed. This also applies to those who are charged with offences that involve minimum sentences as well as where an accused person has spent time in custody because he or she could not meet the terms of bail or bond.

Upon determining the period of imprisonment to impose upon an offender, the court must then deduct the period spent in custody in identifying the actual period to be served (see GATS at Part V). This period must be carefully calculated – and courts should make an enquiry particularly with unrepresented offenders– for example, there may be periods served where bail was interrupted and a short remand in custody was followed by a reissuance of bail e.g., where a surety is withdrawn, and a new surety is later found. This calculation must include time spent in police custody.”
9. Section 333(2) of the [Criminal Procedure Code](#) provides as follows:

“Subject to the provisions of Section 38 of the *Penal Code*, 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 sub section (1) has prior, to such sentence shall take account of the period spent in custody.”
10. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
11. According to the charge sheet, the applicant was arrested on 20.10.2020. The applicant remained in remand throughout the trial until the date of sentencing by the trial court on 30.02.2022.



**Disposition.**

12. The court finds that the application has merit to the extent that the sentence imposed did not take into account the period the applicant had spent in lawful custody prior to sentencing.
13. The sentence of 25 years' imprisonment to commence from the date of arrest, being 20.10.2020 pursuant to section 333(2) of the [CPC](#).
14. Right of appeal 14 days explained.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 24<sup>TH</sup> DAY OF JUNE, 2025**

**S.N MBUNGI**

**JUDGE**

In the presence of :

Court Assistant – Elizabeth Angong'a

