

KENYA / JUDGMENT

Muhongo v Republic (DPP)

[2026] KEHC 13499 (KLR)

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COURT

High Court

BEFORE

DO Onyango

CASE / FILE NUMBER

Criminal Revision E289 of 2024

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Muhongo v Republic (DPP) (Criminal Revision E289 of 2024) [2026] KEHC 13499 (KLR) (16 September 2026) (Ruling) Neutral citation:

[2026] KEHC 13499 (KLR) Republic of Kenya In the High Court at Kakamega Criminal Revision E289 of 2024 DO Onyango, J September 16, 2026 Between Harrison Muhongo Appellant and Republic (DPP) Respondent

Ruling

1. Hamson Muhengo, the applicant herein, was arraigned before Kakamega Chief Magistrate's Court and charged with the offence of defilement contrary to section 3(1) (a)(b) as read within section 8(2) of the Sexual Offences Act No. 3 of 2006. The particulars of the offence were that on 22/4/2021 at [Particulars Withheld] area in Kakamega County, he intentionally caused his penis to penetrate the vagina of DM, a child aged 6 years. He also faced an alternative charge of committing an indecent act with a child contrary to section 11(a) of the Sexual Offences Act No. 3 of 2006. The particulars were that on the 22 nd April 2021 of [Particulars Withheld] area in Kakamega County he intentionally caused his penis to come into contact with the anus of DM, a child aged 6 years. 2. The applicant pleaded not guilty to both the main and alternative charges. 3. Upon consideration of evidence on record, the trial court found the applicant guilty of the alternative charge of committing an indecent act with a child. He was duly sentenced to 10 years imprisonment. 4. The applicant has now sought that the period he spent in custody be considered as part of the sentence served. He deposes that the said period was not considered by the trial court. 5. I have carefully perused the record of the trial court. While the trial court indicated that it had considered the mitigating factors, there is nothing on record to show that the trial magistrate considered the period spent by the applicant in custody. 6. The record indicates that the applicant was arrested on 22 nd April 2021 and arraigned in court on the 23 rd April 2021. Though he was granted bond, he was not released as it appears that he did not secure a

surety. The applicant was therefore in custody from the 22 nd April 2021 to the 4 th January 2023, a period of 20 months. Section 333(2) of the Criminal Procedure Code provides: “ 333(2) 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 the code provided that where the person sentenced under sub-section (1) has, prior to such sentence, been held in custody the sentence shall take account of the period spent in custody.” 7. The sentence of 10 years imprisonment meted against the applicant shall therefore take into account the 20 months when he was in custody during the hearing of his case No. 004 of 2013 at the chief magistrate’s court in Kakamega. Orders accordingly. DATED, SIGNED AND DELIVERED THIS 16 TH SEPTEMBER 2026 D.O. ONYANGO JUDGE

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