



**Ogonji v Republic (Miscellaneous Criminal Application E024 of 2024)  
[2024] KEHC 11451 (KLR) (26 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11451 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VIHIGA  
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2024**

**JN KAMAU, J**

**SEPTEMBER 26, 2024**

**BETWEEN**

**ANTONY OGOJJI ALIAS TONY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Introduction**

1. The Applicant herein was charged with the offence of defilement contrary to Section 8(1) as read with Section 8 (2) of the [Sexual Offences Act](#) No 3 of 2006. He was also charged with an alternative charge of the offence of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#). He was convicted on the main charge and sentenced to fifteen (15) years imprisonment.
2. On 25<sup>th</sup> January 2024, he filed Notice of Motion application dated 24<sup>th</sup> November 2023 seeking a review of his sentence. He prayed that the period that he stayed in custody while the trial was ongoing between 10<sup>th</sup> February 2020 and 7<sup>th</sup> August 2023, when he was arrested and convicted respectively, be taken into account pursuant to Section 333(2) of the [Criminal Procedure Code](#), Article 50(2) and Article 27(1) of the [Constitution](#) of Kenya, 2010.
3. He did not file any Written Submissions. The Respondent was not opposed to the said application and did not therefore file any Written Submissions.



## Legal Analysis

4. 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).
5. This duty is also contained in the Judiciary Sentencing Policy Guidelines where it is provided 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.”
6. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the [Criminal Procedure Code](#) was restated by the Court of Appeal in the case of [Ahmad Abolfathi Mohammed & Another vs Republic](#) [2018] eKLR.
7. The Charge Sheet herein showed that the Applicant was arrested on 10<sup>th</sup> February 2020. He was granted bail and although the proceedings did not indicate the date when he was released on bail, on 10<sup>th</sup> September 2020, the Trial Court indicated that he was present and on cash bail. On 28<sup>th</sup> September 2020, the court ordered that the cash bail be forfeited back to the state as he had absconded court. The same was, however, reinstated on 29<sup>th</sup> September 2020 after he informed the Trial Court that he had gone to the washrooms when his case was called. He was convicted on 7<sup>th</sup> August 2023 and sentenced on 11<sup>th</sup> September 2020.
8. Notably, the sentence was indicated as 4<sup>th</sup> July 2023 (sic) in the proceedings. He thus spent about six (6) months and in custody before he was released on bail. In view of the ambiguity, this court adopted the period that the Applicant had indicated in his application.
9. A reading of the Trial Court’s Sentence showed that it did not take into consideration the time he spent in remand before sentencing. This court was therefore convinced that this was a suitable case for it to exercise its discretion and grant the orders sought.

## Disposition

10. For the foregoing reasons, the upshot of this court’s decision was that the Applicant’s Notice of Motion application dated 24<sup>th</sup> November 2023 that was filed on 25<sup>th</sup> January 2024 was merited and the same be and is hereby allowed.
11. It is hereby directed that the time the Applicant spent in custody between 10<sup>th</sup> February 2020 and 7<sup>th</sup> August 2023 be taken into account while computing his sentence as provided in Section 333(2) of the [Criminal Procedure Code](#) Cap 75 (Laws of Kenya).



12. It is so ordered.

**DATED AND DELIVERED AT VIHIGA THIS DAY OF 2024**

**J. KAMAU**

**JUDGE**

