



REPUBLIC OF KENYA



**Nyangoro v Republic (Criminal Petition E010 of 2023)
[2024] KEHC 11484 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11484 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL PETITION E010 OF 2023
JN KAMAU, J
SEPTEMBER 25, 2024**

BETWEEN

WYCLIFFE OCHIENG NYANGORO PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner herein was charged with the offence of defilement contrary to Section 8(1) as read with Section 8 (3) 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 ten (10) years imprisonment.
2. On 17th August 2023, he filed Notice of Motion application dated 23rd June 2023 seeking a review of his sentence. He prayed that the period of two (2) years and two (2) months that he stayed in custody while the trial was ongoing be taken into account pursuant to Section 333(2) of the [Criminal Procedure Code](#).
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 [Abamad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR.

7. The Charge Sheet herein showed that the Petitioner was arrested on 10th February 2021. He was sentenced on 24th April 2023. Although he was granted bond/bail, he did not appear to have come out on bond/bail while his trial was going on. He thus spent two (2) years, two (2) months and fourteen (13) days in custody before he was sentenced.

8. 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

9. For the foregoing reasons, the upshot of this court’s decision was that the Petitioner’s Notice of Motion application dated 23rd June 2023 that was filed on 17th August 2023 was merited and the same be and is hereby allowed.

10. It is hereby directed that the time the Petitioner spent in custody between 10th February 2021 and 23rd April 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).

11. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 25TH DAY OF SEPTEMBER 2024

J. KAMAU

JUDGE

