



**Omondi v Republic (Miscellaneous Criminal Application
E089 of 2022) [2023] KEHC 3107 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3107 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E089 OF 2022**

**RE ABURILI, J
MARCH 28, 2023**

BETWEEN

JAMES OMONDI APPLICANT

AND

REPUBLIC RESPONDENT

(Arising from Nyando Senior Principal Magistrate Sexual Offence Case No 13 of 2020.)

RULING

1. James Omondi was convicted vide Nyando Senior Principal Magistrate Sexual Offence Case No 13 of 2020 for the offence of rape and sentenced to serve ten (10) years imprisonment on December 6, 2021. He was arrested on February 21, 2020 and he was granted surety bond of Kshs 100,000 on February 24, 2020 and released on February 28, 2020 after Clarkson Odongo Onditi was approved as his surety.
2. He was therefore in custody pending trial for only six (6) days and the original lower court file is available for perusal.
3. In this application, he seeks that section 333(2) of the *Criminal Procedure Code* be considered and his sentence be substituted with non-custodial sentence because he is now reformed.
4. I find no merit in the prayer for reduction of sentence. There are no mitigating circumstances and no testimonials.
5. Nonetheless, I order that the ten (10) years imprisonment shall be calculated less six (6) days that he spent in custody from arrest to his release on bond pending trial.
6. I so order. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 28TH DAY OF MARCH, 2023

R. E. ABURILI



JUDGE

