



**Onserio v Republic (Miscellaneous Criminal Application
E015 of 2020) [2023] KEHC 2583 (KLR) (27 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2583 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E015 OF 2020**

**JN ONYIEGO, J
MARCH 27, 2023**

BETWEEN

SHEM MAKORI ONSERIO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Vide a Notice of Motion filed on 29-12-2020, brought pursuant to section 349 of the *Criminal Procedure Code*, the applicant seeks revision of the sentence of 15 years imposed on 22-10-2020 by Hon. T. Ole Tanchu for the offence of robbery with violence contrary to section 296 (2) of *Penal code*.
2. According to the applicant, the period he spent in remand custody was not considered. The state does not oppose the application.
3. The applicant took plea on 15-2-2018. He remained in custody up to the date of his sentence on 22-10-2020. In his sentence, the court did not factor in the period spent in remand custody pursuant to section 333 (2) of the *Criminal Procedure Code*. I am alive to the fact that Sentencing is a matter of discretion of the trial court to which this court in its appellate capacity will not interfere with unless the trial court applies wrong legal principles. In this case, the court erred by not considering the period spent in remand in custody.
4. Accordingly, the application is allowed and the period spent in remand custody be taken into account when computing sentence. To that extent, the applicant shall serve 15 years less 2 years, 8 months and 20 days.

Right of appeal 14 days.

RULING READ, DELIVERED IN OPEN COURT THIS...27TH DAY OF ...MARCH....., 2023.

J. N. ONYIEGO



JUDGE

In the Presence of:

Mr. Kihara for the state.

Martin/ Mohamed- Court Assistants.

Applicant - present in person

J.N. ONYIEGO

JUDGE

