



**Issack v Republic (Miscellaneous Criminal Application
E016 of 2022) [2023] KEHC 19661 (KLR) (30 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19661 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2022**

**JN ONYIEGO, J
JUNE 30, 2023**

BETWEEN

ADEN EDIN ISSACK APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The appellant was charged before Mandera SRM's Court with the offence of defilement contrary to section 8(1)(3) of the *Sexual Offences Act*. Alternatively, he was charged with the offence of committing an indecent act contrary to section 11(1) of the *Sexual Offences Act*. Having returned a plea of not guilty, the matter proceeded to full trial.
2. Upon close of the trial, the applicant was acquitted of both the main and the alternative count. The court however found him guilty of attempted defilement contrary to section 9(1) of the *Sexual Offences Act* pursuant to section 180 of the *Criminal Procedure Code*. He was sentenced to serve 10 years' imprisonment. The court further stated that the sentence was to start running or calculated from October 7, 2020 when he was remanded in custody.
3. Aggrieved by the conviction and sentence, the applicant appealed to this court *vide* Cr Appeal No 004/2021. After hearing the appeal Hon Justice Abida Ali Aroni upheld the conviction and sentenced on November 11, 2021. Subsequently, the applicant moved this court *vide* a chamber summons filed on October 12, 2022 seeking review of sentence on grounds that he was in remand custody from September 26, 2019 till sentenced hence the court should have taken into account that period.
4. During the hearing, the applicant relied on his submissions filed on January 16, 2023 reiterating that he was entitled to remission of the period spent in remand custody.
5. In response, Mr Owour for the state opposed the application arguing that the court had considered the period spent in remand custody.



6. I have considered the application herein, and the oral submissions by both parties. The application herein is anchored on grounds that the court did not consider the period spent in custody when delivering sentence. He argued that the period should start from September 26, 2021.
7. A perusal of the court file clearly reveals that the trial court did comply with section 333(2) of the *Criminal Procedure Code* by computing the period spent in remand custody. From the lower court record, the applicant was arraigned before court on the September 26, 2019 and then released on bond on October 28, 2019. He then jumped bail on August 6, 2020. He was re-arrested and kept in custody on October 7, 2020 and then released on October 13, 2020.
8. The High Court having considered the legality of the sentence and upheld it on appeal, the same is *functus officio*. Accordingly, the application is dismissed.

DATED, SIGNED, AND DELIVERED VIRTUALLY AT GARISSA THIS 30TH DAY OF JUNE, 2023.

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J. N. ONYIEGO

JUDGE

