



REPUBLIC OF KENYA



**Omany v Republic (Criminal Revision E308 of 2023)
[2023] KEHC 20869 (KLR) (Crim) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20869 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E308 OF 2023**

DR KAVEDZA, J

JULY 27, 2023

BETWEEN

JOHNSON OKOTH OMANY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a chamber summons application (undated) under certificate of urgency and supported by the affidavit of the applicant, Johnson Okoth Omany, seeking revision of his sentence. He prays for orders, *inter alia*, that the court reduces his sentence upon considering the time he had spent in custody prior to sentencing. In the alternative, he prays that his sentence be commuted to Community Service Orders (CSO).
2. The applicant was charged, convicted and sentenced to fifteen (15) years imprisonment for the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#).
3. Firstly, I note that the instant application is premised on the provisions of section 333 (2) of the [Criminal Procedure Code](#) which invokes the revisionary jurisdiction of this court as donated by section 362 of the [Criminal Procedure Code](#) providing as follows:

“...The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court.”



4. Further, section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides that:

“(2) 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.”

5. I have noted from the sentencing proceedings that the applicant was arrested on 12/7/2014, remanded in custody up to 2/9/2014 when he was released on bond (a total of 52 days in custody). He absconded court from 26/4/2017 to 28/7/2017, when he was rearrested and remanded in custody up to 21/2/2020 (a total of 938 days or 2 years, 6 months and 24 days in custody).
6. It is trite law that in determining a custodial sentence, the court must take into account the period which the offender was held in custody during the trial.
7. The applicant herein was in pre-trial custody for 990 days or 2 years and 8 months prior to sentencing. A reading of the sentence proceedings reveals that the learned magistrate only took into consideration the period between 1/9/2017 and 21/2/2020 (a total of 903 days or 2 years, 5 months and 20 days) thus omitting the 52 days which the applicant spent in custody prior to his release on bond/bail. I would accordingly allow the first limb of the application.
8. With respect to the second prayer seeking revision of the sentence imposed to a non-custodial sentence, I am not satisfied that the applicant has met the threshold under section 362 to section 364 of the *Criminal Procedure Code*. I have failed to find any impropriety, illegality or irregularity in the proceedings, the judgment or the sentence that would warrant the court to interfere with the discretion of the trial court.
9. Consequently, I find no error in the sentence imposed by the trial court and decline to interfere.
10. In the end, the application partially succeeds. I therefore order that the period between 12/7/2014 to 2/9/2014, totaling 52 days, shall be included in the computation of the term of sentence.

RULING DATED AND DELIVERED VIRTUALLY THIS 27TH DAY OF JULY 2023.

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D. KAVEDZA

JUDGE

In the presence of:

Ms. Chege for the State.

Applicant present (VTC)

