



**Emitaro v Republic (Miscellaneous Criminal Application 97 of 2023)
[2023] KEHC 25965 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25965 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 97 OF 2023
DO OGEMBO, J
NOVEMBER 23, 2023**

BETWEEN

PETER ODONGO EMITARO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Peter Odongo Emitaro has filed a Notice of motion application herein dated 23/7/2023. The same is brought under section 333(2) of the *Criminal Procedure Code* and prays that the period that the applicant spent in remand custody awaiting determination of his case be accounted for in his sentence. The Prosecution has not made any substantive response to the application of the applicant.
2. Section 333(2) of the *Criminal Procedure Code* declares that such period that one spends in custody awaiting the determination of his trial ought to be considered in his sentence. A consideration of the record of proceedings of the lower court would shed light on this issue.
3. The record shows that the applicant was charged with a main charge of attempted defilement contrary to section 9(1)(2) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve 10 years imprisonment on 8/8/2018. He had been in remand custody during the pendency of his case.
4. In sentencing the applicant, the trial court did not give account of the period the applicant had spent in remand custody. It ought to have done so in accordance with the requirements of section 333(2) of the *Criminal Procedure Code*.
5. It is for this reason that I find merit in this application. I accordingly therefore revise the sentence of the applicant herein. The applicant shall serve 10 years imprisonment as ordered by the trial court. The sentence shall however run from 14-11-2017 when the applicant was first arraigned before the court.



Orders accordingly.

D.O. OGEMBO

JUDGE

23.11.2023

Court:

Ruling read out in Open court in the presence of the applicant and

Ms. Mumu for State.

D.O. OGEMBO

JUDGE

23.11.2023

