



REPUBLIC OF KENYA



**Muyungi v Republic (Criminal Miscellaneous Application E117 of 2022)
[2022] KEHC 13160 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13160 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E117 OF 2022
RE ABURILI, J
SEPTEMBER 23, 2022**

BETWEEN

BENARD AGANDA MUYUNGI APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application arising from Judgment, conviction and sentence at Principal Magistrate's in Siaya in Sexual Offence Case No. 6 of 2019 on 22/1/2020 by Hon. M. Mwangi, Resident Magistrate and Siaya HCCRA No. 6 of 2020 on 30th November 2020)

RULING

1. The applicant convict herein seeks from this court orders for the court to consider the period served in custody during trial, in the sentence imposed on him by the trial court.
2. I have perused the trial court and this court's records. The judgment of this court delivered in HCRA 06/2020 wherein the applicant herein challenged his conviction and sentence in Siaya SPM SO 6/2019 for the offence of defilement contrary to Section 8(1) (3) of the *Sexual Offences Act*, is clear that the discretionary sentence of 15 years imprisonment was to be calculated from January 12, 2019 the date when he was arrested.
3. It follows that this court already considered section 333(2) of the *Criminal Procedure Code* in the appeal by the applicant herein. I find this application an abuse of court process and devoid of any merit. It is hereby dismissed.
4. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 23RD DAY OF SEPTEMBER, 2022

R.E. ABURILI



JUDGE

