



REPUBLIC OF KENYA



**Okendo v Republic (Miscellaneous Criminal Application E024 of 2022)
[2022] KEHC 14236 (KLR) (21 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 14236 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E024 OF 2022
RE ABURILI, J
SEPTEMBER 21, 2022**

BETWEEN

KELVIN OTIENO OKENDO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This application was filed into court on February 24, 2022 by the convict applicant Kelvin Otieno Okendo who is serving a prison term of 10 years and 1 year for the offence of rape contrary to section 3(1) (a) (b) (3) of the *Sexual Offences Act* and assault causing actual bodily harm respectively.
2. He was sentenced on September 11, 2018 by Hon J R Ngarngar, Chief Magistrate in Kisumu Chief Magistrate's sexual offence case No 1 of 2017.
3. The applicant has not indicated in his application dated February 24, 2022 whether he appealed against the conviction and sentence or not.
4. However, in his application, he claims that he was arrested and placed in remand custody on February 27, 2017 to September 11, 2018 when he was sentenced and that the trial court did not take into account the period that the convict has spent in remand custody, in meting out the prison term as required under section 333(2) of the *Criminal Procedure Code*.
5. I have considered the application which has for no apparent reasons recorded, been pending in court for almost one year now. There is no opposition to the application. Upon perusal of the committal warrant issued on September 11, 2018, I am in agreement with the convict/applicant herein that the learned trial magistrate did not take into account the period spend in prison remand custody by the convict in sentencing him.



6. There is further no material to show that the convict herein escaped from lawful custody during the trial or that he was granted bond and that he was on bond pending trial.
7. For the above reasons, I find the application dated February 24, 2022 merited. I grant it and order that the 10 years' imprisonment and the 1-year imprisonment imposed on the convict Kevin Otieno Okendo for the offences of rape and assault causing actual bodily harm respectively, and which sentences were ordered to run concurrently, shall be calculated from the date of arrest of the convict on February 27, 2017, therefore taking into account the period that the convict had spent in remand custody pending the trial, conviction and sentence on September 11, 2018. This order to be served upon the ODPP and officer in charge Kisumu Medium Prison.
8. I so order.
9. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 21ST DAY OF SEPTEMBER 2022

R. E. ABURILI

JUDGE

