



**Odato v Republic (Miscellaneous Criminal Application E139 of 2022)  
[2022] KEHC 14554 (KLR) (26 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14554 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION E139 OF 2022  
RE ABURILI, J  
OCTOBER 26, 2022**

**BETWEEN**

**TOM OPIYO ODATO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an Application for Sentence review in Siaya HCR No. E013 of 2020)*

**RULING**

1. The applicant Tom Opiyo Odato was on 13/6/2022 sentenced to serve 10 years imprisonment in HCR E013/2020 upon being convicted for the offence of Murder contrary to Section 203 as read with Section 204 of the *Penal Code*. He has not appealed. He now seeks orders that this court considers the period he spent in custody prior to the sentence being imposed.
2. I have perused the trial court (HCCR file No. HCR E013/2020).
3. The applicant and his co-accused/convict Agneta Akoth Atira took plea on 2/11/2022 and on November 16, 2020, the court granted them bail/bond of Kshs. 500,000/= each with one surety each, pending trial or to deposit cash bail of Kshs. 100,000/= each into court.
4. The court record shows that on December 23, 2020 a surety was approved for Agneta Atira and later on 15/2/2022 the 1<sup>st</sup> accused, now applicant, was released on bond after his surety Tom Wafula Nyongesa was approved by the Deputy Registrar of this court Hon. Lester Simiyu.
5. Later on 21/2/2022, the surety for Agneta Otira, Mr. Borise Mike Ochola withdrew saying he wanted to sell his land and settle a loan. The court discharged him.
6. After the prosecution closed its case on 21/2/2022 and the two now convicts were placed on their defences and sought time to give their defence, the court suspended the bond for the present applicant.



7. However, on 23/3/2022, the bond for the applicant was reinstated and he was released on bond terms as the earlier ones pending his defence hearing, judgment and sentence.
8. Judgment was delivered on 18/5/2022 and sentence was rendered on 13/6/2022 after the court received a Presentence report on each of the convicts.
9. The court on 18/5/2022 suspended the bond for the applicant herein after finding both accused person guilty of the offence of Murder.
10. It follows that the applicant herein was not in custody throughout the period of his trial. He was arrested on the same date of offence on 17/9/2020 and taken to court on 19/10/2020 *vide* Siaya SPM Criminal Misc. E013/2020 where the DCI obtained orders to hold them, for 5 days to complete investigations.
11. In my sentencing remarks and which should be in the warrant of commitment to jail for the ten (10) years imprisonment, I stated as follows:

“I sentence each of the two accused persons herein Tom Opiyo Odatu and Agneta Akoth Atira to each serve ten (10) years imprisonment taking into account any period spent in prison custody during their trial. Right of appeal is 14 days to the Court of Appeal from today. I so order.”
12. From the above sentencing remarks, it is clear that this court considered the period spent in custody by the applicant herein, in sentencing him.
13. What the applicant should do is to apply/pay for copies of proceedings which are already typed as at the time of sentencing and which would aid him to have the said period calculated by the prison authorities.
14. I find this application misplaced. It is hereby dismissed. This ruling to be served with the order to Officer Incharge Kisumu Maximum Prison.
15. File is closed.

I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 26TH DAY OF OCTOBER, 2022**

**R.E. ABURILI**

**JUDGE**

