

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

CRIMINAL APPLICATION NO. 33 OF 2020

EMMANUEL OCHIENG OWUONDO 1ST APPLICANT

ISAAC NDIRA OSORE2ND APPLICANT

-VERSUS-

REPUBLIC RESPONDENT

RULING

The Applicants, **EMMANUEL OCHIENG OWUONDO** *alias* **SAMUEL OCHIENG OTIENO** and **ISAAC NDIRA OSORE** were convicted for the offence of **Trafficking in Narcotic Drugs** contrary to **Section 4 (A)** of the **Narcotic and Psychotropic Substances Control Act No. 4 of 1994**. Each of them was then sentenced to Life Imprisonment.

1. When they appealed to the High Court, the convictions and sentences were upheld.
2. Thereafter, the Applicants appealed to the Court of Appeal. They have informed this court that the Court of Appeal allowed their respective appeals against the sentences, and substituted the Life Imprisonment with 10 Years Imprisonment.
3. It is well settled that pursuant to **Section 333 (2)** of the **Criminal Procedure Code**, the court ought to take into account the period which an accused was held in custody, during his trial.
4. It is important to emphasize that when a convict was sentenced to imprisonment, it was not automatic that the trial court will order that the sentence shall run from the date when the said convict was arrested.
5. The court is required to take into account the period which the convict was held in custody.
6. It therefore follows that if an accused person was granted Bond or Bail during the period when he was on trial, the court would not be expected to order that the period of imprisonment should run from the date when the said accused was arrested.
7. Having perused the record of the proceedings, I note that the Applicants were granted Bond on 2nd May 2014. The Applicants have not provided the court with information that I can use to verify if they or either of them was in custody after the trial court granted them bond.
8. Secondly, the Applicants did not provide this court with a copy of the Judgment of the Court of Appeal. Therefore, I am unable to verify whether or not the said Court took into account any period which the applicants may have spent in custody, when they were still on trial.
9. In the circumstances, whilst I appreciate that the Applicants would be entitled an order that the period they spent in custody during their trial should be taken into account when calculating the actual period from when the sentence should start running; I find myself hampered by the lack of material upon which I can make definitive findings.
10. Accordingly, I refrain from making any definitive pronouncement concerning the date from when the sentence ought to be calculated.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 16TH DAY OF MARCH 2021

FRED A. OCHIENG

JUDGE