

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

PETITION NO.18 OF 2019

STEPHEN ODHIAMBO NDERE...PETITIONER

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Notice of motion filed herein on 12th November, 2019, by the applicant, **Stephen Odhiambo Ndere**, seeks an order that the nine(9) months already spent by him in remand custody be taken in consideration as he was never released on bond during the trial before the Magistrate's court at Homa-Bay for the offences of attempted rape, contrary to **Section 4** of the **Sexual Offences Act** and assault causing actual bodily harm contrary to **Section 251** of the **Penal Code** for which he was sentenced to twenty five(25) years imprisonment for the first count and four (4) years imprisonment for the second count. The sentences were to run concurrently from **29th September, 2015**.

2. Being dissatisfied with the conviction and sentence, the applicant filed an appeal before this court and on the **4th April 2016** his conviction by the trial court was affirmed, but the sentence of twenty five (25) years imprisonment on the first count (i.e attempted rape) was set aside and substituted for a sentence of either ten (10) or eight(8) years imprisonment. There could be a typographical error or something as paragraph **[27]** of the judgment of the High Court on appeal indicated ten (10) years while paragraph **[28]** indicates eight (8) years. Whatever the case, the state/respondent did not oppose the application and this court having given it due consideration finds it meritable.

Consequently, the application is allowed to the extent that the sentence imposed by this court on appeal be and is hereby reduced by nine(9) months being the period the applicant was in remand custody awaiting trial and conclusion of the case by the Magistrate's Court.

Ordered accordingly.

(Delivered and signed this 26th day of November, 2020)

J.R. KARANJAH

JUDGE OF THE HIGH COURT