



REPUBLIC OF KENYA



**Keter v Republic (Criminal Miscellaneous Application
E087 of 2024) [2025] KEHC 4370 (KLR) (4 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4370 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL MISCELLANEOUS APPLICATION E087 OF 2024**

RN NYAKUNDI, J

APRIL 4, 2025

**ORIGINAL SO CASE NO E040 OF 2020 AT CM'S COURT AT ELDORET
IN THE MATTER OF SENTENCE REVIEW ARISING FROM THE
JUDGEMENT OF HON ODENYO DATE NOVEMBER 2022 WHEREBY I
WAS CONVICTED AND SETNENCED TO 8 YEARS IMPRISONMENT OF
THE OFFENCE OF DEFILEMENT C/SECTION 8(1) AS READ WITH 8(4)**

AND

**IN THE MATTER SETNENCE REVIEW UNDER ARTICLE 50(2)
(Q) OF THE CONSTITUTION OF KENYA IN RELLIANCE WITH
ARTICLE 165(3) (6) (7) OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

ABRAHAM KIPKEMOI KETER APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant in this case has moved the court invoking the constitutional and statute provisions seeking the following orders:
 - a. That the application be certified as urgent and service thereof be dispensed with it be heard in the first instance
 - b. That I am seeking orders for reduction of my sentence pursuant to the provisions of Section 333(2) of the CPC
 - c. That this application has overwhelming chances of success



- d. That the applicant to be present during the hearing and final determination of the application And Which Application is grounded upon the annexed supporting affidavit of ELD/275/22/LS Abrham Kipkemoi Keter among other grounds reasons and arguments to be adduced during hearing thereof
- a. That I am a male adult Kenyan citizen of sound mind versed with the fact of this matter and hence competent to sear this affidavit
 - b. That I charged, tried convicted and sentenced to serve 8 years imprisonment on 30th November 2022 by Hon Odenyo (CM) for the offence of defilement C/Sec 8(1) 8(4) of the SOA No, No. 3 of 2006
 - c. That I am now approaching this Hon. Court to kindly review my sentence of 8 years to provision of article 50(2) (Q) of *the constitution* of Kenya 2010
 - d. That this Hon. Court has the powers bestowed by *the constitution* under article 165(3) (6) (7) of *the constitution*
 - e. That may this Hon Court invoke the provision of Section 333(2) of the CPC and allow my sentence to commence from the date of my arrest being 30th November 2020
 - f. That I am remorseful, repentant, reformed and a law-abiding citizen
 - g. That this application has overwhelming chances of success
 - h. That I pray to be present at the hearing of this application thereof
 - i. That what I have deponed herein is true correct to the best of my knowledge, information and belief
2. The issue before this court is the effect of pre-trial detention of the convicted applicant who had been sentenced 20 years imprisonment and his grievance is that the trial court did not factor in the period spend in remand custody on the sentence imposed on the 30.11.2022. From the record I have focused particularly on Section 333(2) of the CPC which is the statutory provision with settles the approach for the trial court to give credit in computation of the custodial sentence imposed for that particular offence.
3. Pre-sentencing custody or remand refers to any time an offender or suspect to an offence spends in remanded custody prio to the hearing and final judgement of his or her case in which he or she would have found guilty and convicted according to the provisions of the law. It is the cardinal principle of *the constitution* that a suspect or an offender indited for any of the offences under our penal laws is presumed innocent until the contrary is established by the prosecution beyond reasonable doubt. This is what Art. 50 (2) (A) of *the constitution* guarantees the Kenyan people. The Accused persons or suspects could be held in remand for a variety of reasons including waiting for a decision by the trial court on bail under Art. 49 (1) (8) of *the constitution* or that they have been awarded bail or bond for that matter but the same is excessive beyond their respective financial resources. It is worthy mentioning that the use of pre-conviction and sentence custody as increased dramatically in the last decade both in terms of the No. of individuals admitted in remand and the lengthy of time spend in custody. Learned author M. Friedland in his book Detention Before Trial(Toronto University of Toronto Press 1965) made the following observations “Because time spent in custody before trial necessarily has the effect of acting as punishment, the time so spent should be taken into account by the magistrate if the accused is convicted. Whether a legislative direction specifying that time spent in custody awaiting trial be taken into account would significantly affect the ultimate sentence is in many cases doubtful. It would



appear that magistrates are of the opinion that they presently take time into account in their sentences. Nevertheless, the provision is desirable for a number of reasons. It would give legislative approval to the practice and would permit the courts openly to take this factor into account in their sentence, it would encourage those magistrates who presently do not take this time spent in custody into account to do so in the future, and it would counter the opinion, apparently widely held by convicted persons who have spent time in custody awaiting trial, that they were dealt with unfairly.

4. Applying the above principles to the facts of this case the record shows that the Applicant was arraigned in court on 2.11.2020 and finally sentenced on 30.11.2022. The final decision by the learned trial magistrate provides as follows: Accused is sentenced to 8 years imprisonment. Right of Appeal 14 days. This is a clear authority that the circumstances of confinement as a factor under Section 333(2) of the CPC did not inform the quantum of the custodial sentence. In this respect committal warrants be amended for the sentence to be computed from the 2.11.2020.

5. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 4TH DAY OF APRIL 2025

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R. NYAKUNDI

JUDGE

