



**Ogega v Republic (Miscellaneous Criminal Application  
E078 of 2025) [2025] KEHC 7971 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEHC 7971 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E078 OF 2025**

**DR KAVEDZA, J**

**JUNE 9, 2025**

**BETWEEN**

**JOB NYANGWARA OGEGA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant was charged and after full trial convicted by the Subordinate Court for the offence of incest contrary to section 20 (1) of the *Sexual Offences Act*. The appellant was sentenced to serve 20 years imprisonment. His appeal before this court was dismissed on 28<sup>th</sup> October 2024.
2. He has filed the present application dated 1<sup>st</sup> April 2025 seeking sentence review. The grounds raised in support of the application are that the trial court and this court failed to consider the time spent in remand custody during the computation of his sentence.
3. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody.
4. The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already spent in custody. The duty to take in account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms was acknowledged by the Court of Appeal in *Ahamad Abolfathi Mohammed & Another vs. Republic* [2018] eKLR and *Bethwel Wilson Kibor vs. Republic* [2009] eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others vs Kenya Prison Service & 2 others* [2021] eKLR.



5. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be taken into account in meting out the sentence where it is not hindered by other provisions of the law.
6. From the record, the applicant was arrested on 13<sup>th</sup> June 2015 and was released on bond on 13<sup>th</sup> November 2015. During the trial, he absconded until his arrest on 22<sup>nd</sup> December 2021. This period was factored in during the computation of his sentence by the trial court.
7. In the premises, the application is dismissed for lacking in merit.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 9<sup>TH</sup> DAY OF JUNE 2025**

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**D. KAVEDZA**

**JUDGE**

**In the presence of:**

Applicant Present

Mutuma for the Respondent

Tonny Court Assistant.

