



**Ooyo v Republic (Criminal Miscellaneous Application
E067 of 2025) [2025] KEHC 10147 (KLR) (14 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 10147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL MISCELLANEOUS APPLICATION E067 OF 2025**

A MABEYA, J

JULY 14, 2025

BETWEEN

EMMANUEL ONYANGO ODOYO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. On 20/8/2018, EMMANUEL ONYANGO ODOYO was with others charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and to gang rape contrary to section 10 of the *Sexual Offences Act* No. 3 of 2006. It was alleged that on 17/8/2018 at Awasi market, Nyando, he had violently robbed several people and gang raped N.R, a girl aged 19 years.
2. After trial, he was found guilty convicted of the offence and sentenced to 20 years' imprisonment on two counts and 10 years on the 3rd count. The applicant was in custody between 20/8/2018 and 9/10/2019 when he was released on bond, a period of 1 year and 70 days.
3. By a Motion on Notice dated 10/3/2025, the applicant has sought that the provisions of section 333(2) of the *Criminal Procedure Code* be taken into account in computing the period of his incarceration. The State did not oppose the application.
4. Section 333(2) of the *Criminal Procedure Code* provided that: -

“Subject to the provisions of section 38 of the *Penal Code* (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code. Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”



5. I have considered the entire record. I have also considered the proceedings of the trial Court, the judgment and sentence. The trial court did not order that the period which the applicant spent in custody during the trial be taken into account.
6. In this regard, I find the application to be meritorious. I allow the same. I direct that the tabulation of the sentence of 20 years shall take into account the period of between 20/8/2018 and 9/10/2019, 1 year and 70 days, when the applicant was in custody.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 14TH DAY OF JULY, 2025.

A. MABEYA, FCI ARB

JUDGE

