



**Owino v Republic (Miscellaneous Criminal Application
E073 of 2023) [2024] KEHC 940 (KLR) (1 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 940 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E073 OF 2023**

**DO OGEMBO, J
FEBRUARY 1, 2024**

BETWEEN

PHILIP OCHIENG OWINO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Philip Ochieng Owino has filed an application herein on 14.6.2023. The undated application is brought under Section 333 (2) of the *Criminal Procedure Code* (not Article 333 (2) of the Constitution). It seeks that this court be pleased to revise the sentence meted out against the applicant so as to factor in the period that the applicant spent in remand custody while he awaited the determination of his case.
2. In court, the applicant submitted that he had been in remand custody between 8.2.2012 till 17.4.2013.
3. The prosecution did not have any response to the application of the applicant.
4. Section 333 (2) of the *Criminal Procedure Code* declares that the period that an accused person takes in remand custody awaiting conclusion of his trial shall be factored in his sentence in the event of a conviction.
5. I have perused the record of proceedings before the lower court. It confirms that applicant was charged with the offence of Gang Defilement contrary to Section 10 of the *Sexual Offences Act*, No. 3 of 2016. He took plea on 9.2.2012. After a full trial, he was convicted of the offence. On 17.4.2013, he was sentenced to serve 20 years imprisonment.
6. Section 10 of the *Sexual Offences Act*, No. 6 (2016) provides for the punishment of the offence charged as imprisonment for a term of not less than 15 years imprisonment but which may be enhanced to imprisonment for life. The sentence of imprisonment for 20 years as meted out was legal and proper.



7. In the sentence proceedings it is clear the trial magistrate did not factor in the period the applicant spent in custody pending the determination of his trial. The court ought to have done so in line with the Provision of section 333 (2) of the *Criminal Procedure Code*. It is for this reason that I find merit in the application of the applicant filed herein on 14.6.2023. I allow the same and accordingly revise the sentence of the applicant herein. The applicant shall serve 20 years imprisonment as ordered by the trial court. The term shall run from 9.2.2012, the date the applicant was first arraigned before the court.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 1ST DAY OF FEBRUARY, 2024

D.O. OGEMBO

JUDGE

1/2/2024

Ruling read out in the presence of the Applicant in Rachuonyo Prison and Ms. Mumo for the State.

D.O. OGEMBO

JUDGE

1/2/2024

