



**Baraza v Director of Public Prosecutions (Criminal Case
E135 of 2021) [2024] KEHC 2527 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2527 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL CASE E135 OF 2021
SM MOHOCHI, J
MARCH 6, 2024**

BETWEEN

DISMAS OMAKE BARAZA APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS RESPONDENT

RULING

1. The Applicant, Dismas Omake Baraza, was convicted and sentenced to Fifteen (15) years' imprisonment for the offence of Defilement contrary to Section 8(1) as read together with Section 8(3) of the *Sexual Offences Act* 2006 in Molo Criminal Case No. 1339 of 2015. Judgement was delivered and he was sentence upon mitigation on 28th February, 2018 by Hon S. Wahome Chief Magistrate.
2. The Applicant thereafter on 1st November, 2021 filed an application under Section 333 of the *Criminal Procedure Code* seeking that the time he had spent in remand custody be incorporated into his sentence.
3. Directions were issued on the 17th January, 2023 for the application to be heard and disposed-off by way of written submissions and parties were to file their respective submissions.
4. The Respondent conceded to the Applicant's application leaving the onus of scrutiny on this court.
5. In in the case of *Bethwel Wilson Kibor vs Republic* [2009] eKLR the Court expressed itself as follows: -

“By proviso to section 333(2) of the *Criminal Procedure Code* where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account of the period spent in custody. Ombija J, who sentenced the appellant did not specifically state that he had taken into account the 9 years' period that the appellant had been in custody. The appellant told us that as at 22nd September 2009 he had been in custody for 10 years and one month. We think that all these incidents ought to have been taken into account in assessing



sentence. In view of the foregoing, we are satisfied that the appellant has been sufficiently punished. We therefore allow this appeal and reduce the sentence to the period that the appellant has already served. He is accordingly to be set free forthwith unless otherwise lawfully held.”

6. According to The [Judiciary Sentencing Policy Guidelines](#):

“The proviso to section 333(2) of the [Criminal Procedure Code](#) obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

7. This Court has reviewed the entire Criminal Case No.1339 of 2015 noting that the accused was arraigned in Court on 22nd August, 2014 for an offence allegedly committed on the 20th August, 2014. The Court equally note that the sentence was silent as from when it shall run.

8. The Applicant was arrested and arraigned before court on the 22nd May 2015 and remained in remand custody throughout his trial.

9. I thus find the application to be of merit.

10. The sentence imposed on the accused is hereby varied to include:

“The Sentence shall run from the 22nd May 2015.”

It is so ordered.

SIGNED, DATED AND VIRTUALLY DELIVERED AT NAKURU THIS 6TH DAY OF MARCH, 2024.

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MOHOCHI S.M

(JUDGE)

