



**Hassan v ODPD (Criminal Petition E001 of 2024)
[2024] KEHC 3577 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3577 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MARSABIT
CRIMINAL PETITION E001 OF 2024**

JN NJAGI, J

MARCH 6, 2024

BETWEEN

IBRAHIM HASSAN PETITIONER

AND

ODPP RESPONDENT

RULING

1. The petitioner herein has filed a petition dated 9th January seeking that the period spent in custody while undergoing trial be included as part of the sentence of ten years` imprisonment imposed on him and that the same commences from the date of arrest.
2. The petition is based on the grounds that the petitioner was arrested on 23rd October, 2021 and charged with the offence of committing an indecent act contrary to section 11(1) of the *Sexual Offences Act* No.3 of 2006. He was tried of the offence, convicted and sentenced to serve 10 years imprisonment. His appeal to the High Court was unsuccessful. The petitioner has now brought up the instant petition under the provisions of section 333(2) of the *Criminal Procedure Code* which provides that where a person has been in custody prior to being sentenced, the sentence shall take account of the period spent in custody. The petitioner relied on the case of *Abolfathi Mohamed & another v Republic* (2018) eKLR to support the provisions of the afore mentioned section.
3. I have perused the judgment of the trial magistrate. The magistrate did not state whether he had considered the period spent in custody when he sentenced the Petitioner. The petition is thus merited.
4. According to the record of the trial court, the Petitioner was arrested on the 23rd October, 2021, arraigned in court on 23rd October 2021 and sentenced on 28 February 2022. He was in custody throughout the trial which is a period of 4 months. The law as provided under section 333(2) of the *Criminal Procedure Code* is that the period spent in custody awaiting trial should be considered when



sentencing an accused person. I have considered the period spent in custody and order that the sentence imposed on the Petitioner commences from the date of his arrest, that is on 23rd October, 2021.

Order Accordingly.

DELIVERED, DATED AND SIGNED AT MARSABIT THIS 6TH MARCH, 2024.

J.N. NJAGI

JUDGE

In the presence of:

Mr. Otieno for Respondent

Petitioner – Appearing in person – virtually from Meru G.K Prison Meru

Court Assistant – Jarso

30days Right of Appeal.

