



**Omolo v Republic (Miscellaneous Criminal Application
E008 of 2023) [2023] KEHC 798 (KLR) (9 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 798 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2023
RE ABURILI, J
FEBRUARY 9, 2023**

BETWEEN

DAVID OTIENO OMOLO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an application for sentence review in judgment, conviction and sentence of Hon EN Wasike, SRM in Bondo PM Cr 1124/2018 on 30.8.2019 and in Siaya HCCRA No. 71 of 2019)

RULING

1. The applicant/convict David Otieno Omollo was convicted and sentenced to serve ten (10) years imprisonment to the offence of manslaughter contrary to section 202 as read with section 205 of the Penal Code vide Bondo PMCr 1124/2018. He appealed to this court vide HCCRA 71/2019 which appeal he voluntarily withdrew on November 18, 2019. He now by his application dated February 2, 2023 seeks that the period spent in custody during trial be taken into account.
2. I have perused the lower court proceedings annexed to the application. The convict was apprehended to court on November 29, 2018 when he took plea of not guilty. He was jointly charged with Erick Omollo Labilo. They were granted bond of Kshs 300,000/= plus one surety of similar amount but from the trial court proceedings, there is no evidence that he raised the bond terms for him to be released on bond. It follows that indeed, the convict was in custody during the pendency of his trial.
3. I have also perused the sentencing remarks pronounced on August 30, 2019. The trial magistrate never took into account the period spent in custody in sentencing.
4. That being the case, I find this application merited. I allow it and order that pursuant to the provisions of section 333(2) of the Criminal Procedure Code, the sentence of ten (10) years imprisonment shall be calculated from the date of arrest of the convict which is not in the charge sheet as the record shows that the convict was arrested sometime in 2017 but the date is not shown. However, as there is no



contrary evidence that he was arrested on June 7, 2017 which was a day after the death of the deceased and the fact that initially the convict was charged with the offence of murder which was reduced to manslaughter, I hereby order that the sentence of ten (10) years imprisonment shall be calculated from June 7, 2017.

5. I so order.
6. File closed.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 9TH DAY OF FEBRUARY, 2023

R.E. ABURILI

JUDGE

