



REPUBLIC OF KENYA



**Republic v Kipruto (Petition 96 of 2022) [2023] KEHC 918 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 918 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ELDORET  
PETITION 96 OF 2022  
RN NYAKUNDI, J  
FEBRUARY 10, 2023**

**BETWEEN**

**REPUBLIC ..... PROSECUTOR**

**AND**

**CYPRIAN KIPRUTO ..... ACCUSED**

**RULING**

1. This petition arose with the judgement of the trial court and on appeal in Kapsabet Criminal Case No 1583 of 2015 and High Court Cr Appeal No 33 of 2019. In the instant case the Petitioner herein was charged with offence of rape contrary to section 3(1)(a) (b) as read with sub section 3 of the [Sexual Offences Act](#). Following a full trial, the petitioner was convicted sentenced to 15 years imprisonment being aggrieved with conviction and sentence he preferred and appeal to the High Court which on a review of the evidence held as follows:- that the appeal and sentence lacks merit and likely so no interference was exercised by the session judge Githinji J. The petitioner wanting to have a third bite of the cherry moved this court once again by way of a petition expressed pursuant to articles 2(1) (3)(1) 10(2) 19, 22 (1) 25(a) 27(1) (2) (4) 28, 29(a) (f) 50, 159(2) (a) 165(3) (b) (d) of the [Constitution](#) and section 216 and 329 of the [Criminal Procedure Code](#). In addition the petitioner cited and placed reliance on the following authorities: *Muchunu and Other (April 24,11) (2012) JEAK ZPHC Kwa Zulu High Court, SV Scott Crossley 2008(1) SACR 223(SCA), SV Tom S1990(2)SA 8021(A) AT 806 (L)807(B), SV Mofokeng1999(1) SACR502 (W) AT50(6) and SV Jansen 1999(2) SACR at 373(g) – (b) Davis J.*
2. From the lengthy submissions, the petitioner’s main grievance is about noncompliance by both courts with the provisions of section 333(2) of the [Criminal Procedure Code](#). Essentially, the prescriptive provision obligates the court to take into account the period the convict spent on pre-trial remand before imposing a sentence of a term of imprisonment. As far as the submissions of the petitioner’s are concerned read together with the record there is an error on the face of the record that the decision on sentence never factored the credit period spent in remand custody. In my view, pursuant to article 50 (6) (a) & (b) of the [Constitution](#) the committal warrant of 15 years be and is hereby reviewed in



consonant with section 333(2) of the code for the 15 years period of imprisonment to commence on the July 1, 2015.

Orders of the court Accordingly.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 10<sup>TH</sup> DAY OF FEBRUARY 2023.**

**In the presence of the petitioner**

**Mr Mugun for the State**

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**R NYAKUNDI**

**JUDGE**

