



**Kibaki v Director of Public Prosecution (Petition E025 of 2023)
[2023] KEHC 3559 (KLR) (20 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3559 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
PETITION E025 OF 2023
TW CHERERE, J
APRIL 20, 2023**

BETWEEN

JACOB KIBAKI PETITIONER

AND

DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

JUDGMENT

1. Petitioner was convicted for the offence of rape contrary to section 3(1)(a) as read with section 3(3) of the [Sexual Offences Act](#) and was sentenced to 10 years' imprisonment.
2. Petitioner's appeal to the High Court vide Meru H.C.CRA. No. 148 of 2017 was dismissed and the conviction and sentence were confirmed.
3. I have considered the revision in the light of Section 333(2) of the [Criminal Procedure Code](#) which provides: -

Warrant in case of sentence of imprisonment

- (2) Subject to the provisions of section 38 of the [Penal Code](#) (Cap. 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

4. The court in handing down a sentence is obligated to take into account the period an accused has been held in custody prior to such sentence. (See [Ahmad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR).



5. That the Petitioner was arrested on 02nd May, 2016 has not been controverted. From the foregoing, I order that the 10-year sentence shall commence from 02nd May, 2016.

DELIVERED AT MERU THIS 20th DAY OF April 2023

WAMAE. T. W. CHERERE

JUDGE

Appearances

Court Assistant - Kinoti

Petitioner - Present

For DPP - Ms. Rita (PC-1)

