



REPUBLIC OF KENYA



**Ondieki v Republic (Miscellaneous Criminal Application
E084 of 2022) [2023] KEHC 3157 (KLR) (12 April 2023) (Judgment)**

Neutral citation: [2023] KEHC 3157 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E084 OF 2022**

RE ABURILI, J

APRIL 12, 2023

BETWEEN

PATRICK MARANDA ONDIEKI APPLICANT

AND

REPUBLIC RESPONDENT

(Kisumu HCRA No 27 of 2017 which appeal was dismissed on May 10, 2018)

JUDGMENT

1. The Applicant Patrick Maranda Ondieki vide his application filed on August 5, 2022 claims that he was convicted and sentenced to serve twenty (20) years imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#) on April 6, 2019.
2. He claims that the court in sentencing him did not take into account the period that he spent in custody as part of the sentence served as per the provisions of Section 333(2) of the [Criminal Procedure Code](#) and in line with Article 25(2) of the [Constitution](#). He claims that he was in prison for one (1) year prior to being sentenced by the Maseno Principal Magistrate's Court Sexual Offences Case No. 633 of 2016.
3. He also claims that he appealed vide Kisumu HCRA No 27 of 2017 which appeal was dismissed on May 10, 2018 where the court upheld the conviction and sentence.
4. I have considered the application and perused the original lower court file Maseno Principal Magistrate Sexual Offences Case No 633 of 2016 and original HCRA No 27 of 2017 and the proceedings and judgment in the two files.
5. The convict herein was according to the charge sheet dated May 23, 2016, arrested on May 19, 2016. He took plea on May 23, 2016.
6. On the date when he took plea, the court granted him bond of Kshs 200,000/= plus one surety of similar amount. However, there is no evidence that the Convict herein was released on the bond as



granted. It follows that he remained in custody until he was sentenced and in sentencing, the trial court and the High Court on appeal did not take into account the period spent in custody as contemplated in Section 33(2) of the *Criminal Procedure Code*.

7. For the above reasons, I find this application merited. I allow it and order that the twenty (20) years imprisonment imposed on the convict herein on April 6, 2017 shall be calculated from May 19, 2016 the date of arrest of the Convict Patrick Maranda Ondieki.
8. Prison to be served with this order forthwith.
9. This file is hereby closed. I so order.

Dated, Signed and Delivered at Kisumu this 12th Day of April, 2023

R E ABURILI

JUDGE

