



**Tuti v Republic (Miscellaneous Criminal Application
E029 of 2022) [2023] KEHC 3281 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3281 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E029 OF 2022**

**RE ABURILI, J
APRIL 12, 2023**

BETWEEN

JOEL SANDE TUTI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Convict/Applicant is Joel Sande Tuti. He was convicted and sentenced to serve twenty (20) years imprisonment for the offence of Gang Rape contrary to Section 10 of the [Sexual Offences Act](#) No 3 of 2006; vide Maseno Senior Principal Magistrate's Court Sexual Offences Case No 396 of 2014 on January 31, 2018.
2. He appealed and vide HCCRA No 13 of 2018, the sentence was reduced to ten (10) years imprisonment.
3. The Convict now applies that the four (4) years that he spent in custody before being sentenced be taken into account, as the same was not considered during sentencing.
4. This court called for the lower court file which has not been availed for the last one (1) years.
5. The Convict was under a duty to file his copies of proceedings and judgement since he pursued his case up to appeal level.
6. This court cannot take judicial notice that the applicant was in custody during trial as he was charged in 2014.
7. I dismiss the application. The applicant can file a fresh application annexing copies of court proceedings which were served on him on appeal.
8. This file is closed.



DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF APRIL, 2023.

R. E. ABURILI

JUDGE

