



**Ayoo v Republic (Criminal Petition E005 of 2023)  
[2023] KEHC 17824 (KLR) (22 May 2023) (Judgment)**

Neutral citation: [2023] KEHC 17824 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL PETITION E005 OF 2023**

**RE ABURILI, J**

**MAY 22, 2023**

**BETWEEN**

**JOSEPH ODHIAMBO AYOO ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**JUDGMENT**

(From original conviction and sentence in Senior Principal Magistrate’s Court Criminal Case No 375 of 2018 at Winam)

1. The Applicant/Petitioner herein is a convict vide Winam SPM Criminal Case No 375 of 2018. He was convicted and sentenced on May 8, 2019 for the offence of grievous harm contrary to Section 234 of the *Penal Code*.
2. He was sentenced to serve seven (7) years imprisonment by Hon B Kasavuli, SRM.
3. He filed a Petition for Sentence Review vide HCCR Application No E122 of 2022 which was dismissed as it was not supported by any court proceedings. This was on March 28, 2023. He has now filed a petition supported by affidavit, charge sheet and court proceedings in Winam SPM Criminal Case No 375 of 2018.
4. He seeks for sentence reduction taking into account the provisions of Section 333(2) of the *Criminal Procedure Code*, being the period that he spent in custody pending trial and sentencing.
5. I have considered the Petition dated May 16, 2013 under Certificate of Urgency. I am satisfied that from the proceedings and charge sheet, the Petitioner was arrested on June 15, 2018 and that although he was granted bond of Kshs 100,000 plus one surety of similar amount on June 18, 2018 the date of plea, he never raised the surety.



6. The proceedings relating to the surety who was sworn on July 2, 2018 were set aside *suo moto* by the trial magistrate as the court discovered that the surety was for a different accused person in Criminal Case No 383 of 2018 and not Criminal Case No 375 of 2018.
7. As there is no other contrary evidence that the Petitioner herein was not released on bond pending trial and sentence on May 8, 2019, I find this Petition to be merited. I allow it and order that the seven (7) years imprisonment imposed on the Petitioner herein shall be calculated from June 15, 2018 the date of his arrest.
8. Signal to issue.
9. I so order.
10. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 22<sup>ND</sup> DAY OF MAY, 2023**

**R. E. ABURILI**

**JUDGE**

