



**Kanya v Republic (Miscellaneous Criminal Application
E031 of 2023) [2023] KEHC 19006 (KLR) (19 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 19006 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E031 OF 2023**

RE ABURILI, J

JUNE 19, 2023

BETWEEN

EVANS KANYA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This court has rendered itself not once and not twice but severally that a convict who wishes this court to consider reduction of sentence imposed by the lower court, on account of Section 333(2) of the *Criminal Procedure Code* must and it is their duty, to place before this court, proceedings conducted in the trial court for consideration on whether the convict was on bond during trial and if not, the date of his arrest.
2. I have before me such an application similar to Misc. Criminal Application No. 111 of 2022 but no material to demonstrate that in the defilement case at Winam in SPM Sexual Offences No 13 of 2020, the convict herein Evans Kanya was held in custody throughout the trial and that therefore I should invoke Section 333(2) of the *Criminal procedure Code* to his benefit.
3. The applicant claims that he was in prison custody for two (2) years prior to his sentencing for ten (10) years on June 23, 2022. However, there is no evidence placed before me to support the allegation.
4. For the above reasons, I find no material upon which I can made orders favourable to the applicant convict. The application is hereby dismissed.
5. The convict can file a fresh application attaching documents.
6. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 19TH DAY OF JUNE, 2023



R. E. ABURILI
JUDGE

