



**Oloo v Republic (Miscellaneous Criminal Application
E035 of 2023) [2023] KEHC 21106 (KLR) (25 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21106 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E035 OF 2023**

DO OGEMBO, J

JULY 25, 2023

BETWEEN

CHARLES OMONDI OLOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Charles Omondi Oloo, has by way of a notice of motion application dated March 13, 2023 moved this court. The application is brought under section 333 (2) of the [Criminal Procedure Code](#) and seeks that the sentence of the applicant be ordered to run from the date of his arrest. The applicant relies on Machakos High Court petition No E017/2021 and also Mombasa petition No 97/2021. He has urged the court to consider the period he spent in custody in this sentence, a fact he submits was ignored both by the trial court and the High court on appeal.
2. The prosecution have not made any submissions on this application.

In deciding on this application, I have considered the record of the proceedings both of the trial court, and of the High court on appeal.

The applicant was convicted and sentenced to serve 30 years imprisonment for the offence of defilement contrary to section 8 (1) as read with section 8 (2) of the [Sexual Offences Act](#), No 3 of 2006. This was on October 12, 2018. He appealed to the High Court *vide* Siaya High Court criminal appeal No 57 of 2018. And by a judgment delivered on October 6, 2020, the appeal of the applicant was dismissed wholly.

Section 333 (2) of the [Criminal Procedure Code](#), provides;

“Provided that where the person sentenced under sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take into account of the period spent in custody.”



3. The record of the proceedings of the trial court clearly show that upon taking plea on July 18, 2016, the applicant was placed on a bond of Kshs 200,000/= with 1 surety of a similar amount. His surety was approved by the court on July 22, 2016, 6 days later. And on August 2, 2016, the certificate of search of the security was deposited. The applicant, therefore was not remanded in any custody as he underwent the trial.

The consequence is that the application of the applicant brought under section 333 (2) of the *Criminal Procedure Code* must fail. I accordingly find this application dated March 13, 2023 incompetent and lacking in any merit. I dismiss the same wholly. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH DAY OF JULY, 2023

D.O. OGEMBO

JUDGE

25.7.2023

Court:

Ruling read out in Open court (online) in the presence of Applicant (Kisumu Maximum) and Ms. Mumu for the State.

D.O. OGEMBO

JUDGE

25.7.2023

