



REPUBLIC OF KENYA



**Obonyo v Republic (Criminal Revision E192 of 2023)  
[2023] KEHC 20888 (KLR) (Crim) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20888 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL  
CRIMINAL REVISION E192 OF 2023**

**LN MUTENDE, J**

**JULY 17, 2023**

**BETWEEN**

**JORIM OSODO OBONYO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Jorim Osodo Obonyo, the applicant, was arraigned for rape contrary to Section 3(1) (a) (b) as read with Section (3) of the *Sexual Offences Act*; and; personation contrary to Section 382 of the Penal Code.
2. Having denied the charge he was taken through full trial, convicted and sentenced to serve ten (10) years imprisonment.
3. It is his contention that the court did not take into account time spent in custody during trial.
4. Section 333 (2) of the *CPC* provides thus:

"(2) Subject to the provisions of section 38 of the *Penal Code* (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody..."



5. The *Judiciary Sentencing Policy Guidelines* provide that:

“The proviso to section 333 (2) of the *Criminal Procedure Code* obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”

6. In meting out sentence the trial court delivered itself thus:

“Accused was convicted vide judgement of the court delivered on 31/1/2023. A probation officers report was sought and not been availed to date.

I have proceeded to sentence the accused after considering the nature of the offence and his mitigation as follows:

Count 1: Accused is sentenced to serve 10 years imprisonment.

Count 11: Accused is sentenced to serve 7 years imprisonment.

The sentences are to run concurrently.

Right of Appeal 14 days.”

7. It is apparent that time spent in custody was not considered. In the premises I review the sentence meted out by directing that it will be effective from the date of arrest, the 10<sup>th</sup> day of February, 2018.

8. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 17<sup>TH</sup> DAY OF JULY 2023.**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF**

Applicant

Mr. Kiragu for ODPP

Court Assistant - Mutai

