



**Oruko v Republic (Miscellaneous Criminal Application  
E060 of 2023) [2023] KEHC 20162 (KLR) (12 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20162 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION E060 OF 2023**

**DO OGEMBO, J**

**JULY 12, 2023**

**BETWEEN**

**GEORGE OMONDI ORUKO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, George Omondi Oruko, has filed a notice of motion application herein on May 17, 2023 seeking that the period he spent in remand custody awaiting determination of his case be accounted for in the sentence. He has deponed that the same equaled 19 months.
2. The prosecution did not object to the application if indeed the trial court did not consider such period sent in custody.
3. The proviso to section 333(2) of the *Criminal Procedure Code* declares that such period spent in remand custody be accounted for in the sentence.
4. I have considered the record of proceedings before the lower court. It shows that the applicant was charged with the offence of grievous harm contrary to section 234 of the *Penal Code*. He was accordingly convicted and sentenced to serve 13 years imprisonment. This was on July 26, 2017.
5. It is clear from the sentence proceedings that the appellant was given the opportunity to mitigate. In his mitigation, the applicant stated;

“I urge the court to consider the period I have been in custody from November 2015.....”

The court in passing the sentenced noted;

“Mitigation is considered. I have taken into account the period the accused spent in jail.....”



6. Section 234 of the Penal Code under which the accused was convicted provides:

“Any person who unlawfully does grievous harm to another is guilty of a felony and is liable to imprisonment for life.”

7. Clearly, the trial court, took into account the period the applicant has spent in remand custody before sentencing him to serve 13 years imprisonment as opposed to life imprisonment as provided for in the law.

8. The record also show that upon his conviction and sentence, the applicant filed before this court, criminal appeal No. 72 of 2017, in which he appealed against the sentence. In dismissing his appeal, the learned judge in fact opined that the sentence meted out against the applicant was in fact lenient.

9. This court is accordingly convinced that in sentencing the applicant, the trial court duly took into account the period the applicant had taken in remand custody. And that this court dismissed the appeal on sentence filed by the applicant. The application of the applicant filed herein on May 17, 2023 and brought under section 333(2) of the Criminal Procedure Code, therefore lacks in any merit. The same is dismissed wholly.

Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 12TH DAY OF JULY, 2023**

**D.O. OGEMBO,**

**JUDGE**

**Court:**

Ruling read out in Open Court in the presence of the applicant and Ms. Mumu for the State.

**D.O. OGEMBO,**

**JUDGE**

**12.7.2023**

