



**Omondi v Republic (Miscellaneous Criminal Application
E051 of 2023) [2023] KEHC 20076 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20076 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E051 OF 2023**

DO OGEMBO, J

JULY 5, 2023

BETWEEN

FREDRICK OTIENO OMONDI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Vide a Notice of Motion Application dated March 21, 2023, the applicant Fredrick Otieno Omondi, seeks that the period of 11 month that he spent in remand custody awaiting be considered as part of his sentence. The application has been brought under section 333(2) of the *Criminal Procedure Code*. He has deponed that the High court had ordered that his sentence do run from the date of conviction. The appelliant relied on the case of *Abmed Abolifathi Mohammed & 6 Others -vs- Republic* [2018] eKLR.
2. The Prosecution’s submissions were that court do consider the record of proceedings to make a ruling on this application.
3. I have considered the cited provision of the law. The proviso to section 333(2) of the *Criminal Procedure Code* declares that such period that an accused person spends in remand custody awaiting determination of their case ought to be accounted for in the sentence.
4. The record of proceedings herein show that the applicant was first charged with the offence of Manslaughter contrary to section 203 as read with Section 205 of the *Penal Code*, for which he was convicted and sentenced to serve 15 years imprisonment. His appeal against the conviction and sentence was dismissed on 25/5/2020. Both the trial court and the High Court were however silent on when the sentence of the appelliant would start running. The sentence of the applicant ought to have been ordered to run as to account for the period he had remained in remand custody awaiting trial.



5. I accordingly therefore find merit in the application of the applicant dated March 21, 2023. I allow the same and order that the sentence of the applicant do run from March 9, 2017, the date the applicant was first arraigned in court. It is so ordered.

D. O. OGEMBO

JUDGE

5TH JULY, 2023

Court:

Ruling read out in Open court in presence of the Applicant and Ms Mumu for the State.

D. O. OGEMBO

JUDGE

5TH JULY, 2023

