



**Amara v Republic (Criminal Petition E020 of 2023)  
[2023] KEHC 23783 (KLR) (18 October 2023) (Ruling)**

Neutral citation: [2023] KEHC 23783 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
CRIMINAL PETITION E020 OF 2023  
DO OGEMBO, J  
OCTOBER 18, 2023**

**BETWEEN**

**PETER OBARE AMARA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. In an undated application filed in court on 11-5-2023, the applicant Peter Obare Amara seeks that this court do revise his sentence to account for the period he spent in custody while awaiting the determination of his trial. He has submitted that he was charged, convicted and sentence to serve 20 years imprisonment. That he appealed to the High Court vide Criminal Appeal No. 115 of 2016 which appeal was dismissed.

In a short response, the learned Prosecutor urged the court to dismiss the application of the applicant in view of the fact that his appeal was already dismissed by the High Court. I have considered this application of the applicant. I have also considered the record of proceedings both of the trial court and on appeal before this court. I have also considered the sentence provided for the offence of defilement contrary to Section 8(1)(3) of the *Sexual Offences Act*, No. 3 of 2006, under which the applicant was charged. The said Section provides for a sentence of not less than 20 years imprisonment.

2. In our instant case, the trial court, on 15-9-2016, sentenced the applicant to serve 20 years imprisonment. The High Court, in its Judgment delivered on 19/2/2018, affirmed the conviction and sentence.

The proceedings both before the trial court and the High Court do not indicate whether period the applicant served in custody awaiting the determination of his trial was accounted for in the sentence. Section 333(2) of the *Criminal Procedure Code* declares that such period spent in custody while awaiting determination of the trial ought to be considered in the sentence. The applicant was in custody as he underwent his trial. This period ought to have been factored in his sentence.



3. It is for this reason that I find merit in the application of the applicant. I allow the same. I accordingly therefore revise the sentence of the applicant herein and order that the applicant shall serve a term of 20 years imprisonment as ordered by the trial court and confirmed on appeal. The sentence of the applicant shall run from 9-6-2015, the date the applicant was first arraigned before the court. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 18TH DAY OF OCTOBER, 2023**

**D.O. OGEMBO**

**JUDGE**

10.2023

Court:

Ruling read in court in the presence of the Applicant (Naivasha) and Ms. Mumu for the State.

**D.O. OGEMBO**

**JUDGE**

10.2023

