



**Keru v Republic (Criminal Miscellaneous Application E074 of 2021)
[2024] KEHC 14200 (KLR) (15 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14200 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E074 OF 2021
HI ONG'UDI, J
NOVEMBER 15, 2024**

BETWEEN

JAMES KARANU KERU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. James Karanu Keru the Applicant was the accused in Nakuru Chief Magistrate’s Criminal Case (Sexual Offences) No. 28 of 2018. He was charged and convicted of the offence of rape contrary to section 3 (1) (a) (c) as read with section 3(3) of the *Sexual Offences Act* No. 3 of 2006 Laws of Kenya. Upon conviction on 21st May, 2021 he was sentenced to ten years imprisonment.
2. He has filed this application dated 5th July, 2021 seeking to have the court invoke the provisions of section 333(2) of the Criminal Procedure Code and order that his sentence runs from the date he was remanded. The application is supported by his sworn affidavit of even date.
3. This application was heard orally. The applicant repeated his prayer for section 333(2) Criminal Procedure Code to be effected, as far as his sentence was concerned.
4. Prosecution counsel Mrs Okok did not oppose the application. She confirmed that the period the applicant spent in custody prior to his conviction and sentence was not considered by the trial court. She urged the court to review the sentence and order that the sentence runs from 12th November, 2018 when the applicant was first arraigned in court.
5. I have considered the application dated 5th July, 2018 together with the submissions by both parties. Section 333(2) of the Criminal Procedure Code provides:

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“(2) Subject to the provisions of section 38 of the Penal Code 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 sub section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spend in custody”.

6. A perusal of the original record in Nakuru Chief Magistrate’s Criminal Case (Sexual Offences) No. 28 of 2018 reveals that the trial court in sentencing the applicant did not make reference to section 333(2) of the Criminal Procedure Code.
7. The upshot is that the application has merit and is hereby allowed. The sentence of ten (10) years imprisonment is upheld with an order that the sentence runs from 12th November, 2018 when the applicant was first arraigned in court.
8. Orders accordingly.

DELIVERED, DATED AND SIGNED THIS 15TH DAY OF NOVEMBER, 2024 IN OPEN COURT AT NAKURU.

H. I. ONG’UDI

JUDGE

