



**Nzomo v Republic (Miscellaneous Criminal Application E030 of 2024)
[2024] KEHC 13815 (KLR) (7 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 13815 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2024**

**JN ONYIEGO, J
NOVEMBER 7, 2024**

BETWEEN

SIMON NDOO NZOMO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged and convicted for the offence of defilement contrary to section 8(1) (3) of the *Sexual Offences Act* No. 3 of 2006 and imprisoned to 20 years' imprisonment.
2. He has since moved this court seeking for orders that his sentence be deemed to have started from the time of his arrest. He urged that he has spent 4 years in prison and therefore, has since reformed hence ready to join the society. He averred that he has since learnt and acquired some skills while in prison to enable him come up with life should he be released. That he has undertaken and completed a certificate course in Alcohol and Drug Abuse, certificate of participation in Nairobi regional talents, 2024, certificate in Theology and certificate of completion in Theology Prisoners Journey.
3. He stated that he desired that the time spent in custody be included in computation of his sentence. On the hand, Mr. Kihara, the learned prosecution counsel opposed the application stating that previously, the applicant had appealed his conviction and sentence before this court and the same was declined. That it was not therefore in order for him to seek for time spent in lawful custody. He thus urged the court to dismiss this application.
4. I have read and understood the application herein and the respective submissions by both parties. In my view, the only issue for determination is whether the applicant is entitled to review of sentence under Section 333(2) of the *Criminal Procedure Code*.



5. Section 333(2) of the [Criminal Procedure Code](#) provides: -

“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 spent in custody.”[See the case in [Abamad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR].

6. In the same breadth, according to the [Judiciary Sentencing Policy Guidelines](#):

“The provision 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”.

7. The applicant herein was arrested on 28.12.2020 and sentenced on 06.07.2021. Notably, the applicant spent a period of 6 months and 1 week in remand custody which in my view ought to be accounted for. As such, I opine that the same ought to be deducted from the 20-year sentence imposed by the honourable court.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 7TH DAY OF NOVEMBER 2024

J. N. ONYIEGO

JUDGE

