



**Owino v Republic (Miscellaneous Criminal Application E193 of 2024)  
[2024] KEHC 15755 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15755 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
MISCELLANEOUS CRIMINAL APPLICATION E193 OF 2024**

**DR KAVEDZA, J  
DECEMBER 16, 2024**

**BETWEEN**

**STEPHEN OTIENO OWINO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted for two counts of sexual assault contrary to section 5(1)(a) of the *Sexual Offences Act*, No. 3 of 2006. He was sentenced to serve 7 years imprisonment on each count to run concurrently from the date of arrest. He has now filed an application seeking revision of sentence. He filed an affidavit in support of his motion. The arguments raised are that the trial court failed to consider the time he spent in remand custody during the computation of sentence under the provision of section 333(2) of the *Criminal Procedure Code*, Cap 75 of the Laws of Kenya.
2. I have considered the application, the affidavit in support and the applicable law. I have also considered the trial court record. The issue for consideration is whether the trial court considered the time the applicant spent in remand custody.
3. The proviso to section 333(2) of the *Criminal Procedure Code* obligates the court to consider the time already spent in custody. The duty to take in account the period an accused person had remained in custody in sentencing under the proviso to section 333(2) of the *Criminal Procedure Code* which is couched in mandatory terms was acknowledged by the Court of Appeal in *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR and *Bethwel Wilson Kibor v Republic* [2009] eKLR and more recently in the High Court case of *Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others* [2021] eKLR.



4. It is therefore clear that it is mandatory that the period which an accused has been held in custody prior to being sentenced be considered in meting out the sentence where it is not hindered by other provisions of the law.
5. From the record, the applicant was arrested on November 28, 2022. He was arraigned in court for take plea and was in custody for the entirety of his trial until his conviction on August 10, 2023. He, therefore, spent time in remand custody. From the record, it is clear that the period was factored in during his sentencing. The court directed that the sentence to run from the date of his arrest.
6. For avoidance of doubt the sentence shall run from November 28, 2022. The application is therefore found to be lacking in merit and is dismissed.

Orders accordingly.

**RULING DATED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF DECEMBER 2024**

**D. KAVEDZA**

**JUDGE**

