



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KISUMU**

**CRIMINAL PETITION NO. E012 OF 2021**

**ENOCK OKOTH KOI.....PETITIONER**

**-VERSUS-**

**REPUBLIC.....RESPONDENT**

**RULING**

The Petitioner, **ENOCK OKOTH KOI** has informed the court that he had already canvassed an earlier Petition, which resulted in the substitution of the death sentence with imprisonment for 30 Years.

1. The current application sought the reduction of the 30 years imprisonment, so that the Petitioner could be reintegrated back to the society.
2. Ms M. Odumba described the Petition as constituting an abuse of the process of the court.
3. I have given careful consideration to the application, and noted that the only request being made by the Petitioner was that this court should take into account the period when he was held in custody, whilst he was still on trial.
4. Pursuant to **Section 333 (2)** of the **Criminal Procedure Code**;

*“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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”*

5. In my considered view, if the Petitioner simply sought a reduction of the sentence that had been handed down during re-sentencing, that would have been an abuse of the process of the Court.
6. Strictly speaking, the Petitioner had invoked the provisions of **Section 333 (2)** of the **Criminal Procedure Code**, pursuant to which the court is enjoined to take into account the period when the person sentenced had spent in custody, when he was still on trial.
7. I have verified from the record of the proceedings that the Petitioner was in custody during the entire duration of the trial.
8. Accordingly, pursuant to **Section 333 (2)** of the **Criminal Procedure Code** I find that this Court is obliged to take into account the six (6) years which the Petitioner had spent in custody whilst he was still on trial.
9. In the result the 30 Years imprisonment will now be discounted by six (6) years.
10. It is so ordered.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 13TH DAY OF MAY 2021**

**FRED A. OCHIENG**

**JUDGE**