



**REPUBLIC OF KENYA**

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

**MISC. CRIMINAL APPLICATION NO. E086 OF 2021**

**CORAM: HON. R.E. ABURILI, J**

**JAMES ODONGO OWALA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Being an Application for Sentence Review against sentence in Ukwala Senior Resident Magistrate's Court in Cr. Case No. 234 of 2015)*

**RULING**

1. In his application filed on 1/7/2021, James Odongo Owala seeks for orders that this court do take into account the period of 6 months he spent in prison remand prior to his sentencing in calculating the sentence imposed on him by the trial court.
2. The applicant claims that he was convicted for the offence of attempted defilement contrary to Section 9(1)(2) of the Sexual Offences Act and was sentenced to serve 10 years imprisonment on 10/11/2015 by Ukwala SRM's court. He has not appealed as there is no evidence of such appeal. He claims that in sentencing him, the trial court did not apply Section 333(2) of the Criminal Procedure Code to ensure that the sentence runs from the date of arrest. Under the said Section, the order would apply only where the convict did not abscond upon being granted bond.
3. In the instant case, there is no trial court record or record of proceedings filed to show that the applicant was not released on bail pending trial; or that he did not simply raise bail or that he never absconded.
4. We called for the lower court record which has not been availed to this court and therefore this court cannot make orders in a vacuum. It was upon the applicant to file with his application, all documents including proceedings of the lower court for perusal by this court.
5. For want of evidence that the applicant was not on bond or that he did not abscond, I find the application unsupported. I hereby dismiss it and mark this file as closed.
6. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 20TH DAY OF SEPTEMBER 2021**

**R.E. ABURILI**

**JUDGE**