

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

MISCELLANEOUS CRIMINAL APPLICATION NO. E256 OF 2021

VIOLET AKINYI ONJIKO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, ***VIOLENT AKINYI ONJIKO***, has filed this application on 23.7.2021 under certificate of urgency. The same, is seeking orders under section 333(2) of the Criminal Procedure Order. That the period of 1½ years that she spent in custody awaiting determination of her trial be accounted for in her sentence. The prosecution has however opposed this application on grounds that the said sentence was proper and with the law. It was however, conceded that the court may consider the period spent in custody if the trial court failed to do so.

It is clear that the applicant faced charges under section 8(1) as read with Section 8(2) and section 11(1) of the Sexual Offences Act, No. 3 of 2006.

I have considered the record of the proceedings herein. It is clear from the same that when the applicant was given the opportunity to mitigate, she only raised the issue of time she had spent in custody for consideration. The court, in sentencing the applicant, on 27.9.2019, stated (at paragraph 12), that;

“The accused person is therefore sentenced to 10 years’ imprisonment less 3 years she has been in custody. She will therefore serve 7 years’ imprisonment.”

From the sentence proceedings, the court clearly considered the mitigation of the accused, and also a probation officers report. The sentence passed is no doubt legal and proper. With the court clearly noting mitigation of the applicant, and giving accounts of the period spent in custody, this application clearly lacks merit. The same is dismissed wholly. Orders accordingly.

D. O. OGEMBO

JUDGE

18.11.2021.

Court:

**RULING READ OUT IN OPEN COURT IN PRESENCE OF THE APPLICANT (LANGATA)
AND MS. AKUNJA FOR THE STATE.**

D. O. OGEMBO

JUDGE

18.11.2021.