



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI**  
**CRIMINAL DIVISION**  
**MISC. CRIMINAL APPLICATION CASE NO. 371 OF 2019**

**ERICK OCHIENG OKELO.....APPLICATION**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant, Erick Ochieng Ooko, filed this present applicant on 19.7.2019. The applicant seeks an order of review of the sentence meted against the applicant by the trial court. That the said sentence ought to account for the period that the applicant spent in remand custody awaiting trial. Though it is not stated under which provision of the law this application has been brought, I am convinced that the same is brought under section 333(2) of the Criminal Procedure Code. The same stipulates:

*Section 333(2) 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 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*

The application is obviously based on the proviso to the said section 333(2), the sentence ought to account for the period one has spent in custody awaiting the determination of his case. To this extent the learned counsel for the prosecution, who responded to the application without the benefit of typed proceedings from the lower court, conceded that they would not object to the application if indeed the period spent in custody was not accounted for in the sentence.

I only note that the issue of typed and or certified proceedings of the lower court was already settled herein on 30.1.2020, when the court made an order that those proceedings need not be typed.

The applicant was tried for an offence of Gang Rape contrary to section 10 of the sexual offences Act, No. 3 of 2006. After full trial he was convicted and sentenced to serve 10 years imprisonment. According to the section of the law under which the applicant was convicted and sentenced, the applicant was liable to a sentence of not less than 15 years imprisonment, but which could be enhanced to imprisonment for life. The proceedings of the lower court clearly indicate that on passing the sentence on 22.2.2017, the trial magistrate took into account the period that the applicant had taken in custody awaiting trial.

The trial magistrate having considered the period the applicant spent in custody, this application by the applicant lacks any merit. I dismiss the same and order that the applicant do serve his sentence as ordered by the trial court.

**OGEMBO D. O.**

**JUDGE**

**8.5.2020**

**Court:**

Ruling read out by not visible the Skype in presence of the applicant and Ms. Chege for the Republic.

**OGEMBO D. O.**

**JUDGE**

**8.5.2020**