



REPUBLIC OF KENYA



KENYA LAW
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**Ojuaka v Republic (Miscellaneous Criminal Application E037 of 2025)
[2025] KEHC 16246 (KLR) (5 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16246 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISII
MISCELLANEOUS CRIMINAL APPLICATION E037 OF 2025**

TA ODERA, J

NOVEMBER 5, 2025

BETWEEN

YUSTO ODHIAMBO OJUAKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Yusto Odhiambo and Preston Ayayo Mireje filed applications in Homabay High Court Misc Application numbers E031 of 2025 and E032 of 2025 under Section 333 (2) of the criminal procedure Code seeking consideration of their remand period in their sentences of 25 years imprisonment and review of the said sentence.
2. Hon. Lady Justice Olga Sewe forwarded the matters to this court for hearing and determination on 26.3.25.
3. The matters were registered in this court as Kisii High Court Misc. Criminal application no E037 of 2025 and E035 of 2025.
4. The State submitted that the matters went on appeal and the sentence was confirmed by the Court of Appeal and so the application is for dismissal.
5. I have seen the Judgment in Court of Appeal Criminal appeal no. 21 of 2019 dated 11.10.24 in which the applicants herein were the appellants where the sentence was upheld. This court lacks jurisdiction to interfere with the sentence of court of appeal. I proceed to dismiss the prayer for sentence review.
6. On the issue of remand period Section 333 (2) of the Criminal procedure code mandates the trial courts to take into account remand period in sentencing the accused. I believe that this court has jurisdiction to deal with the issue of remand period being the trial court.



7. The record of the primary case that is Homabay High Court Criminal Case no. 7 of 2015 indicates that accused were first arraigned in court on 26.2.15 and they were released on bond on 18. 5. 15 and 23.4.15 respectively. The remand period for Yusto Odhiambo from 26.2.2015 till 18.5.15 be taken into account while computing is sentence of 25 years. The remand period for Preston Ayayo Mireje of between 26.2.15 and 23.4.15 be taken into account in computing his sentence of 25 years imprisonment
8. I note that the bonds of both applicants were cancelled on 6.12.18 upon their conviction and they were sentenced on and between 6.12.18 when they were convicted and sentence 11.2.19. I direct that the said remand period between 6.12.18 and 11.2.19 be also taken into account when computing the sentences of both applicants.

DELIVERED VIRTUALLY VIA TEAMS PLATFORM IN THE PRESENCE OF: -

T.A ODERA

JUDGE

5.11.25

Both Applicants

Mr. Koima for the State

Court Assistant Mr. Kipchirchir

