



**Otieno v Republic (Criminal Miscellaneous Application E133 of 2025)  
[2025] KEHC 18414 (KLR) (11 December 2025) (Ruling)**

Neutral citation: [2025] KEHC 18414 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL MISCELLANEOUS APPLICATION E133 OF 2025**

**A MABEYA, J  
DECEMBER 11, 2025**

**BETWEEN**

**REAGAN OCHIENG OTIENO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. On 16/10/2022, Reagan Ochieng Otieno was charged with the offence of defilement contrary to section 8(1) as read with section 8(30) of the *Sexual Offences Act*. It was alleged that on the 14<sup>th</sup> and 15<sup>th</sup> October, 2022 at [Particulars withheld], Sidho East II sub-location in Muhoroni sub county within Kisumu County, he intentionally caused his penis to penetrate the vagina of I.S.O a child of 14 years.
2. The applicant was also charged with the alternative charge of indecent act with a child contrary to section 11(1) of the *Sexual Offences Act*.
3. After trial, he was convicted of the main charge and sentenced to imprisonment for 20 years. On appeal, the sentence was reduced to 10 years. The Court on appeal directed that the sentence would start running from the day he was placed in custody on 15/10/2022.
4. By Motion on Notice dated 5/8/2025, the applicant has sought that the provisions of section 333(2) of the CPC be taken into account in computing the period of his incarceration. The State is not opposed to Motion.
5. Section 333(2) of the Criminal Procedure Code provided that: -

“Subject to the provisions of section 38 of the Penal Code (Cap 63) 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.”

6. I have considered the entire record. I have also considered the proceedings of the appellate Court, the judgment and sentence. This Court (Aburili J) in its sentence directed that the applicant’s sentence would start running from the date he was placed in custody on 15/10/2022. In essence the court was complying with the provisions of section 333(2) of the CPC.
7. In this regard, I find the application to be without merit and hereby proceed to dismiss it. However, it is clarified that the sentence was ordered to commence on 15/10/2022 which the Prison authorities should comply with.

It is so ordered.

**DATED AND DELIVERED AT KISUMU THIS 11<sup>TH</sup> DAY OF DECEMBER, 2025**

**A. MABEYA, FCI Arb**

**JUDGE**

