



**Okuto v Republic (Criminal Miscellaneous Application
E050 of 2025) [2026] KEHC 3886 (KLR) (23 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 3886 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VIHIGA
CRIMINAL MISCELLANEOUS APPLICATION E050 OF 2025**

JN KAMAU, J

MARCH 23, 2026

BETWEEN

ISAAC BENARD OKUTO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged with others on two (2) Counts. Count I was for the offence of gang rape contrary to Section 10 of the [Sexual Offences Act](#) No 3 of 2006. He was also charged with an alternative offence of committing an indecent act with an adult contrary to Section 119A) (sic) of the [Sexual Offences Act](#). On Count II, he was charged with the offence of robbery with violence contrary to Section 295 as read with Section 296(2) of the Penal Code. He was further charged with an alternative charge of handling stolen goods contrary to Section 322(2) of the Penal Code.
2. He was convicted on the two (2) main charges and sentenced to fifteen (15) years imprisonment on Count I and death sentence on Count II. The Trial Court suspended the fifteen (15) years imprisonment sentence pending execution of his death sentence.
3. Being aggrieved by the said decision, he lodged an appeal in the High Court in Kakamega in HCCRA No 161B of 2018 (Consolidated the Criminal Appeal Nos 161A and 161C) where his conviction was upheld and death sentence substituted with a sentence of twenty (20) years imprisonment. The sentence of fifteen (15) years imprisonment on the offence of gang rape was upheld and both sentences were ordered to run concurrently.
4. On 26th September 2025, he filed the undated Notice of Motion application herein seeking that the period he spent in remand during trial be considered under Section 333(2) of the Criminal Procedure Code.



5. The Respondent was not opposed to his application and hence both parties did not file their respective Written Submissions. This Ruling is, therefore, based on the Applicant's application and his affidavit evidence.

Legal Analysis

6. Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya) provides 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” (emphasis court).
7. Further, Clause 4.6.20 (ix) of the Judiciary Sentencing Policy Guidelines provides that:-

“The Sentencing Court shall be guided by the sentencing principles and objectives set out in Part I of these the Guidelines in all resentencing hearings. The following mitigating factors were set out by the Supreme Court as particularly relevant in a resentencing hearing:...

Time already spent in prison by the convict...”
8. The duty to take into account the period an accused person had remained in custody before sentencing pursuant to Section 333(2) of the Criminal Procedure Code was restated by the Court of Appeal in the case of *Ahamad Abolfathi Mohammed & Another vs Republic*[2018]eKLR.
9. The Charge Sheet showed that the Applicant was arrested on 21st September 2016. Although he was granted bond/bail, he did not appear to have posted the same. He was convicted on 8th January 2018 and sentenced on 29th January 2018.
10. A perusal of the decision in *Granius Abwanjo & 2 others vs Republic* [2019] KEHC 4437 (KLR) indicated that Ong’udi J (as she then was) rendered herself as follows:-
 - i. The result is that the Appeal on conviction on both counts is dismissed. The conviction on both counts is therefore upheld.
 - ii. The sentence of fifteen (15) years on the 1st count of gang rape is upheld.
 - iii. I substitute a sentence of twenty (20) years imprisonment for the 2nd count
 - iv. Sentences to run concurrently.”
11. As the said appellate court neither took into account the period that the Applicant spent in custody during trial nor pronounced itself as to when the sentence was supposed to run from, this court took the view that it would not be sitting on appeal of his decision if it granted the Applicant the said period. This court, therefore, found and held that the period the Applicant remained in remand as his trial was ongoing ought to be taken into account while computing his sentence.



Disposition

12. For the foregoing reasons, the upshot of this court's decision was that the Applicant's undated Notice of Motion application that was filed on 26th September 2025 was merited. His conviction and sentence, however, be and are hereby upheld as they were both safe.
13. However, for the avoidance of doubt, the period that the Applicant spent in custody during trial between 21st September 2016 and 28th January 2018 be and is hereby taken into account while computing his sentence pursuant to Section 333(2) of the Criminal Procedure Code Cap 75 (Laws of Kenya).
14. It is so ordered.

DATED AND DELIVERED AT VIHIGA THIS 23RD DAY OF MARCH 2026

J. KAMAU

JUDGE

