



**Omollo v Republic (Miscellaneous Criminal Application
E019 of 2026) [2026] KEHC 5294 (KLR) (24 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5294 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E019 OF 2026**

A MABEYA, J

APRIL 24, 2026

BETWEEN

ERICK OWUOR OMOLLO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Erick Owuor Omollo ('the applicant') was charged with the offence of robbery with violence contrary to section 296(2) of the *Penal Code* and gang rape contrary to section 10 of the *Sexual Offences Act* before the Maseno Principal Magistrates Court. After trial, he was found guilty, convicted and sentenced to 20 years' imprisonment.
2. His appeal to this Court was dismissed in HCCRA No. 04 of 2019. By a Motion on Notice dated 5/2/2026, he has sought for the review of his sentence by ordering that his sentence commence from the date of his arrest under the provisions of section 333(2) of the *Criminal Procedure Code*.
3. Section 333(2) of the *Criminal Procedure Code* provides: -

“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.”
4. It is clear from the foregoing that an accused is entitled to have the period he spent in custody during trial be considered during sentencing. If that is not considered, it is a proper ground for appeal. If the sentence is by the subordinate court, then an accused is entitled to either appeal to the High Court or seek review.



5. In the present case however, the appeal by the applicant was dismissed by this Court. He cannot seek review here. That is a clear ground for appeal. He should seek redress before the Court of Appeal as it will be an error of law for this Court not to have applied section 333(2) of the *Criminal Procedure Code*.
6. That being the case, I find that this Court has no jurisdiction to review a decision of a Court of concurrent jurisdiction and hereby dismisses the Motion. Let him appeal to the Court of Appeal against the decision that failed to take into consideration the provisions of section 333(2) of the *Criminal Procedure Code*.

It is so ordered.

DATED AND DELIVERED AT KISUMU THIS 24TH DAY OF APRIL, 2026.

A. MABEYA, FCI Arb

JUDGE

