



REPUBLIC OF KENYA



**KENYA LAW**  
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**Onyango v Republic (Criminal Appeal 232 of 2018)  
[2023] KECA 1366 (KLR) (15 November 2023) (Judgment)**

Neutral citation: [2023] KECA 1366 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT KISUMU  
CRIMINAL APPEAL 232 OF 2018  
HM OKWENGU, HA OMONDI & JM NGUGI, JJA  
NOVEMBER 15, 2023**

**BETWEEN**

**DOMNIC OMONDI ONYANGO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from the Judgment of the High Court of Kenya at Kisumu  
(Majanja, J.) dated 18th April, 2018 in HCCRC No. 01 of 2016)*

**JUDGMENT**

1. Domnic Omondi Onyango, the appellant herein, was tried and convicted by the High Court (Majanja, J) for the offence of murder contrary to section 203 as read with section 204 of the [Penal Code](#). He was sentenced to serve 20 years imprisonment.
2. He is now before us in an appeal which is against sentence only.
3. The main ground of appeal is that the learned Judge of the High Court erred in failing to consider, the time that he had spent in custody during the pendency of the trial. The applicant has filed written submissions in which he argues that as provided under section 333(2) of the [Criminal Procedure Code](#), the period spent in custody during the trial is a factor to be considered when sentencing. He relies on [Ahamad Abolfathi Mohammed & Another v Republic](#) [2018] eKLR, and the [Judiciary Sentencing Policy Guidelines](#) clauses 710 and 711.
4. The respondent has filed written submissions in which they concede to the appeal, accepting that section 333(2) of the [Criminal Procedure Code](#) requires that the period spent in remand during the trial, be included in the computation of the sentence.



5. In the circumstances, we allow this appeal and order that the 2 years that the appellant spent in custody during the pendency of the trial be factored in the computation of the 20 years prison sentence imposed on the appellant.

Those shall be the orders of this Court.

**DATED AND DELIVERED AT KISUMU THIS 15<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

**DEPUTY REGISTRAR**

**Order of the court**

1. Further to our Judgment delivered on 15<sup>th</sup> November, 2023, we hereby give clarity to the Judgment by ordering that the prison sentence of 20 years imposed on the appellant shall be computed to commence on 16<sup>th</sup> January, 2016, being the date, the appellant was first arraigned in court and remanded in custody.

**MADE AT KISUMU THIS 16<sup>TH</sup> DAY OF NOVEMBER, 2023.**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**H. A. OMONDI**

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**JUDGE OF APPEAL**

**JOEL NGUGI**

.....

**JUDGE OF APPEAL**

*I certify that this is a true copy of the original*

**DEPUTY REGISTRAR**

