



**Odiwuor v Republic (Miscellaneous Criminal Application  
E058 of 2023) [2024] KEHC 391 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 391 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION E058 OF 2023  
DO OGEMBO, J  
JANUARY 25, 2024**

**BETWEEN**

**MICHAEL DAVID ODIWUOR ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*((Being an Application for sentence revision from conviction and sentence  
in the Chief Magistrate’s Court at Siaya in Criminal Case No. 1004  
of 2018 by Hon. L. Simiyu, Principal Magistrate dated 15/4/2021))*

**RULING**

1. The applicant, Michael David Odiwuor, has moved this court by way of a Notice of Motion application filed herein on 17-5-2023. The application is shown to be brought under Article 25 (1) and 50 (2) of the Constitution. In the body of the application, the applicant prays that his sentence be revised so as to account for the period of two (2) years that he spend in remand custody as he awaited determination of his case.
2. The Prosecution has not made any substantive response to the application of the applicant.
3. I have considered his application and the affidavit in support of the same sworn on 5-5-2023. Ideally, the application of the accused ought to have been made under Section 333 (2) of the Criminal Procedure Code. The section provides:  

“ Provided that where the person sentenced under sub-section (1) has prior to such sentence, been held in custody the sentence shall take account of the period spent in custody.”
4. In this regard, I have perused the record of proceedings of the trial court. Same shows that the applicant was first arraigned in court on 27-9-2018. He was convicted and sentenced to serve 10 years imprisonment. This was on 15/4/2021.



5. In the sentence proceedings, the trial court did not indicate if the period the applicant had been in remand custody was accounted for in the sentence. It also did not determine from when the sentence ought to have run. It ought to have done so in satisfaction of Section 333(2) of the *Criminal Procedure Code*.
6. For this reason, I allow the applicant's application filed herein on 17-5-2023 and accordingly revise the sentence of the applicant. I order that the applicant shall serve 10 years imprisonment as ordered by the trial court. This sentence shall run from 27-9-2018, the date that the applicant was first arraigned before court. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 25<sup>TH</sup> DAY OF JANUARY, 2024.**

**D.O. OGEMBO**

**JUDGE**

**25.01.2024**

**COURT:**

Read out in court in the presence of the Applicant and Ms. Mumo for State.

**D.O. OGEMBO**

**JUDGE**

**25.01.2024**

