



**Opiyo v Republic (Miscellaneous Criminal Application
100 of 2023) [2024] KEHC 485 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 485 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 100 OF 2023
DO OGEMBO, J
JANUARY 25, 2024**

BETWEEN

FREDRICK OUMA OPIYO 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. E220 of 2022 by Hon. B. B. Limo (SRM) on 20/2/2023 AND in Siaya HC No. E084 of 2023 dated 02/10/2023)

RULING

1. The applicant, Fredrick Ouma Opiyo has moved this court by way of a Notice of Motion Application brought under article 25(c) and 50(2) of *the Constitution* and section 333(2) of the *Criminal Procedure Code*. The application basically prays that the period the applicant has spent in custody be calculated and considered in his sentence. He has deponed in the Affidavit that the period he spend in remand custody was not considered in his three (3) years imprisonment sentence. The Prosecution has not tendered any tangible response to the application.
2. I have considered this application and the Affidavit in support of the same.
3. I have also considered the record of proceedings before the lower court. The same shows the applicant was charged with the offence of House Breaking contrary to section 304 (1) (b) and Stealing contrary to section 279 (b) of the *Penal Code*. This was on 11/8/2022.
4. The applicant was subsequently convicted of the same and on 20/2/2023 was sentenced to serve a period of three (3) years imprisonment. The applicant was in remand custody during the period of his trial.



5. Section 333 (2) of the *Criminal Procedure Code* mandates a trial court to take into account the period that an accused person has spent in custody in his sentence. In the sentence herein, the trial court did not give account of the period spent in custody. It ought to have done so.
6. It is for this reason, that I find merit in the application of the applicant filed herein on 3/8/2023. I allow the same and accordingly revise the sentence of the applicant.
7. I order that the applicant serves a sentence of three years imprisonment as ordered by the trial court. The sentence shall run from 11-8-2022, the date when the applicant was first arraigned before the court. It is so ordered.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 25TH 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 the Respondent.

D.O. OGEMBO

JUDGE

25.01.2024

