



REPUBLIC OF KENYA



KENYA LAW
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**Bundi v Republic (Criminal Appeal E048 of 2022)
[2023] KEHC 396 (KLR) (Crim) (31 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E048 OF 2022
DO OGEMBO, J
JANUARY 31, 2023**

BETWEEN

SOTERI MAINA BUNDI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Soteri Maina, has pleaded to this court by way of petition filed on 4.4.2022 for revision of his sentence. That the period he spent in remand custody be accounted for in his sentence on accordance with section 333(2) of the *Criminal Procedure Code*. In his submissions in court on 15.11.2022, he submitted that he had been in remand from 11.2.2019 till 15.7.2021, a period the court failed to consider.
2. Counsel for the state, Ms. Joy, on the other hand submitted that the court at page 2 of the sentence, noted that the applicant has spent 2 years, 3 months and 23 days in custody before sentencing him to serve 10 years imprisonment. The court was urged to make appropriate orders if the same was not factored in the sentence.
3. I have considered the submissions of the 2 sides. I have also perused the record of proceedings before the lower court. The applicant was charged with attempted defilement contrary to section 9(1)(2) of the *Sexual Offences Act*, No. 3 of 2006. On 15.7.2021 he was sentenced to serve 10 years imprisonment.
4. It is clear from the sentence proceedings of 28.6.2021, that the learned trial magistrate noted:

“the accused has been in custody from the date of arrest on 11.2.2019. The accused has spent 2 years, 3 months and 23 days in custody.”



5. Having noted that the applicant had been in custody through the period of trial as above, the court nonetheless went on to pronounced the maximum sentence of 10 years imprisonment on the applicant. The court did not give account to the period he had spent in custody awaiting determination of his case. It ought to have done this.
6. It is for this reason that I find application of the applicant for revision meritorious. I accordingly allow the same and revise the sentence of the applicant. The applicant shall serve 10 years as ordered by the trial court. This sentence shall run from 12.2.2019, the date the applicant was first arraigned in court. This is pursuant to section 333(2) of the Criminal Procedure Code.

It is so ordered.

HON. D. O. OGEMBO

JUDGE

31ST JANUARY 2023.

Court:

Ruling read out in court (On line) in the presence of the applicant (kamiti Medium), and Ms. Akunja for the state.

D. O. OGEMBO

JUDGE

31ST JANUARY 2023.

