



DYM v Office of the Director of Public Prosecution (Miscellaneous Criminal Application E056 of 2022) [2023] KEHC 1990 (KLR) (28 February 2023) (Ruling)

Neutral citation: [2023] KEHC 1990 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E056 OF 2022**

A. ONG'INJO, J

FEBRUARY 28, 2023

BETWEEN

DYM APPLICANT

AND

OFFICE OF THE DIRECTOR OF PUBLIC PROSECUTION RESPONDENT

RULING

1. The applicant was charged with offence of incest contrary to section 20(1) of the *Sexual Offences Act* No 3 of 2006. Particulars were that on March 22, 2014 at [particulars Withheld] village of [particulars Withheld] location in Kwale county within coast region the applicant caused his penis to penetrate the vagina of ZG a female person who to his knowledge was his niece.
2. The applicant was convicted and sentenced to serve 2 years' jails term. He appealed in Mombasa High Court No 58 of 2016 and the conviction and sentence was upheld.
3. The applicant now seeks that period he spent in remand custody prior to conviction & sentence be factored in his sentence and he should be committed to non-custodial sentence for the remainder of the sentence.
4. The applicant was granted bond of 50,000/= with a surety when arraigned on March 25, 2014 but it appears that upto the time that he was convicted April 7, 2015 he didn't secure his release on bond and he is therefore entitled to benefit of the provisions of section 333(20) of the *Criminal Procedure Code* that his sentence of 20 years should run from March 25, 2014.
5. As to whether his sentence should be reviewed to non-custodial sentence the applicant sexually abused his sisters 10 years old daughter instead of protecting her. The proviso to section 20(1) of the *Sexual Offences Act* is that where the female is a minor the culprit shall be sentenced to serve life imprisonment.



6. The applicant was lucky to get 20 years which I think was inadvertence on the part of the trial magistrate & the applicant should be satisfied with that leniency and serve his sentence. Application succeeds partially.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 28TH DAY OF FEBRUARY, 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Ogwel – Court Asst.

Mr. Ngiri for State

Applicant – Present in person

Hon. Lady Justice A. Ong'injo J

28/02/2023

