



REPUBLIC OF KENYA



**Miere v Republic (Criminal Revision E084 of 2020)
[2023] KEHC 1103 (KLR) (Crim) (21 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1103 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL REVISION E084 OF 2020
DO OGEMBO, J
FEBRUARY 21, 2023**

BETWEEN

CHRISPINE OTIENO MIERE APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Chripine Otieno Miere, filed a Notice of Motion application herein on November 12, 2020. It is a revision application brought under both section 362 and 333(2) of the [Criminal Procedure Code](#). It seeks that the period the applicant spent in remand custody be accounted for in his sentence. In the affidavit in support of the application, the applicant has deponed that he had remained in custody for 2 years from February 2017 till March 4, 2019.
2. The prosecution in its short response only stated they had no objection if indeed the court had not accounted for such period.
3. This is a revision application section 362 of the [Criminal Procedure Act](#), provides;

“The High Court may call for and examine the record of any criminal proceedings before my subordinate court for the purpose of satisfying itself as to the correctness, legality, or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any such subordinate court.”
4. The above provision declares the jurisdiction of this court of revision of such orders or findings of the subordinate courts.



5. The proviso to section 333(2) of the *Criminal Procedure Code*, on the other hand declares;
“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.”
6. I have perused the record of proceedings herein. The applicant was charged with Defilement of a child contrary to section 8(1) as read with section 8(4) of the *Sexual Offences Act*, No 3 of 2006. He faced an alternative charge of Indecent Act with a child contrary to section 11(1) of the *Sexual Offences Act*, No 3 of 2006. He was first arraigned before court on February 16, 2017. the applicant was convicted of the main charge whose sentence at section 8(4) of the *Act* is a term of not less than 15 years.
7. I have further considered the sentence proceedings of March 4, 2019. In the proceedings, the Honourable trial magistrate noted;
“In sentencing, I have considered the offence in question, the penalty provided under the law, the mitigation of the accused and time the accused has spent in custody. Accused is sentenced to serve 15 years imprisonment.”
8. In the above sentence, whereas the learned trial magistrate noted that period spent in custody had been taken into account, the court nonetheless proceed to mete out the maximum sentence. It ought to have given account of the 2 years spent in remand custody pursuant to section 333(2) of the *Criminal Procedure Code*.
9. It is for this reason that I find merit in the application of the applicant filed herein on November 12, 2020. I accordingly revise the sentence of the applicant. The applicant is ordered to serve 15 years imprisonment as ordered by the trial court. This sentence shall run from the date the applicant was first arraigned in court on February 16, 2017 pursuant to section 333(2) of the *Criminal Procedure Code*. It is so ordered.

D. O. OGEMBO

JUDGE

21ST FEBRUARY, 2023.

Court:

Ruling read out in open court (on line) in the presence of the applicant (Kamiti Medium), and Ms. Joy for the Respondent.

D. O. OGEMBO

JUDGE

21ST FEBRUARY, 2023

