



REPUBLIC OF KENYA



KENYA LAW
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**Iminza v Republic (Criminal Revision E069 of 2023)
[2023] KEHC 2727 (KLR) (30 March 2023) (Judgment)**

Neutral citation: [2023] KEHC 2727 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E069 OF 2023
RN NYAKUNDI, J
MARCH 30, 2023**

BETWEEN

BEATRICE IMINZA APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal for revision of the sentence of Hon. L. Kassin in Eldoret Chief Magistrate's Criminal Case No.2038 of 2018 delivered on 8th October 2020)

JUDGMENT

1. The appellant was charged with the offence of trafficking persons contrary to section 3(1) of the counter trafficking in persons act No 8 of 2010. The particulars of the offence were that on diverse dates between 2016 and October 2018 in Kipkaren estate of Kapseret sub county, for the purpose of exploitation and vulnerability, she received and harboured 15 children aged between 3 and 8 years old.
2. The appellant pleaded not guilty and the matter proceeded to full hearing. Upon considering the testimony of the witnesses, the defence of the appellant and the submissions of the parties, the trial court was satisfied that she was guilty and she was convicted and sentenced to 5 years imprisonment.
3. Being aggrieved with the sentence, the appellant instituted the present appeal seeking a revision of the sentence based on the grounds that the court did not take into consideration the time spent in custody as per the requirements of section 333(2) of the *Criminal Procedure Code*, that she is a single mother of 49 years undergoing chemotherapy at KNH.
4. The respondent opposed the revision as the sentence was within the law and the appellant had lured parents and got away with 15 children. Learned Counsel urged that the appeal be dismissed and the sentence upheld.



ANALYSIS & DETERMINATION

Whether the appellant's sentence should be revised

5. I have perused the record of the trial court and it is evident that the appellant was sentenced on October 8, 2020. Further, it also emerges that the appellant was arraigned in court on May 17, 2018 and there is no indication that she was ever out on bail.

Section 333(2) of the *Criminal Procedure Code* states;

- (2) Subject to the provisions of section 38 of the *Penal Code* (Cap 63) every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.

6. The appellant has served four years of her five-year sentence in custody which, in my considered view, a substantial amount of the sentence. In its judgement, the trial court failed to indicate whether it took the period spent in custody into consideration. Further, it is apparent that the appellant is unwell and has been undergoing treatment while in custody. I hereby order that the sentence be set aside and the appellant be set free forthwith unless otherwise lawfully held.

It is so ordered.

DELIVERED, DATED AND SIGNED ON THIS 30TH DAY OF MARCH 2023

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R NYAKUNDI

JUDGE

Coram: Before Hon. Justice R. Nyakundi

Mugun for the State

