



REPUBLIC OF KENYA



**Lugo v Republic (Miscellaneous Criminal Application
E156 of 2022) [2023] KEHC 3012 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3012 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E156 OF 2022**

**A. ONG'INJO, J
MARCH 24, 2023**

BETWEEN

JUMA MALUNJA LUGO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant Juma Malunga Lugo applied pursuant to Section 333(2) of the [Criminal Procedure Code](#) that period he spent in remand custody be factored in his sentence.
2. The appellant was convicted for the offence of defilement contrary to Section 8(1) as read with section 8(3) of the [Sexual Offences Act](#) and was sentenced to serve 20 years' jail term.
3. Applicants appeal to the High Court and Court of Appeal were dismissed and conviction and sentence upheld. The Applicant now seeks that period spent in custody be factored in his sentence and that his mitigation during sentencing and now be considered in reviewing his sentence.
4. The Applicant was arraigned in court jointly with 2 others on December 27, 2013 and bond of Kshs 100,000/= with sureties of similar amount granted to each.
5. I have perused the records of the trial court and established the applicant was in remand custody throughout his trial and is therefore entitled to provisions of Section 333(2) of the [Criminal Procedure Code](#).
6. The Applicants sentence of 20 years should take effect from 2December 7, 2013. The trial Magistrate did however consider the mitigation but indicated that her hands were tied by the provisions of section 8(3) of the [Sexual Offences Act](#) which provides minimum sentences.
7. In consideration of the principles in [Francis Muruatetu](#) Petition and the holding in [Philip Mueke & others v Republic](#) this court reviews the sentence to 15 years to take effect from December 21, 2013.



DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF MARCH, 2023.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Accused – Present in person

Mr. Ngiri – Counsel for State

HON. LADY JUSTICE A. ONG'INJO

JUDGE

