



**Kiege v Republic (Criminal Revision E019 of 2021)
[2023] KEHC 4056 (KLR) (27 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 4056 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E019 OF 2021
GL NZIOKA, J
APRIL 27, 2023**

BETWEEN

JAMES KIMUHU KIEGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of rape contrary to section 3(1)(a) (b)(3) of the *Sexual Offences Act*, No 3 of 20026 and an alternative charge of committing an indecent act with an adult contrary to section 11(A) of the Act.
2. He pleaded not guilty and the case proceeded to full hearing. He was subsequently found guilty and convicted on the main count and sentenced to serve five (5) years imprisonment.
3. By a memorandum of sentence review filed in court on November 4, 2021, and supported by his own affidavit, he avers that, he is a first offender and remorseful of the offence. That, he is the breadwinner of his family and his incarceration has placed them in a very difficult financial situation.
4. He further prays that; the period he was in custody of seven (7) months be considered while the sentence is being reviewed.
5. The state did not oppose the application and left it to the court to determine.
6. I have considered the same in light of the provision of section 362 of the *Criminal Procedure Code* which empowers the court to deal with revision matters. Indeed, the applicant is not appealing against conviction and all he wants is that, the court considers reviewing the sentence by reducing it or converting it to a non-custodial one.
7. He avers that, he is ready to reconcile with the complainant, and that, during the period he has been in custody, he has trained in various fields and been reformed.



8. The provisions of section 362 of *Criminal Procedure Code* referred herein states that the court will revise an order of the subordinate court which is irregular, improper, incorrect or illegal.
9. In the instant matter, the offence that the applicant was charged with, convicted and sentence of is founded under section 3 of the *Sexual Offences Act*, which states:

"3.

- (1) A person commits the offence termed rape if –
 - (a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;
 - (b) the other person does not consent to the penetration; or (c) the consent is obtained by force or by means of threats or intimidation of any kind.
- (2) In this section the term “intentionally and unlawfully” has the meaning assigned to it in section 43 of this Act.
- (3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life."

10. The applicant was sentenced to a period of five (5) years which is then incorrect and irregular and therefore I enhance the sentence accordingly. However, I take into account the fact that he was arrested on September 17, 2020, and arraigned in court on September 18, 2020. He remained in custody until the date of judgment on April 13, 2021.
11. Pursuant to the provisions of section 333(2) of the *Criminal Procedure Code* that period of six (6) months should have been considered. I order therefore that his custodial sentence takes effect from the September 18, 2020.
12. It is so ordered.

DATED, DELIVERED AND SIGNED ON THIS 27TH DAY OF APRIL, 2023

GRACE L. NZIOKA

JUDGE

In the presence of:

Applicant present in court virtually

Mr Atika for the respondent

Ms Ogutu; court assistant

