



**Katiero v Republic (Criminal Revision E057 of 2021)
[2023] KEHC 17663 (KLR) (Crim) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17663 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)**

**CRIMINAL
CRIMINAL REVISION E057 OF 2021**

LN MUTENDE, J

MAY 25, 2023

BETWEEN

DAVID ALIGULA KATIERO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. David Aligula Katiero, the applicant, was charged with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. In the alternative he faced the charge of committing an Indecent Act with a child contrary to section 11(1) of the *Sexual Offences Act* (SOA).
2. He was taken through full trial whereby the court found him guilty, on the alternative count, convicted and sentenced him to serve ten (10) years imprisonment.
3. Through an undated application filed herein on February 26, 2021, the applicant seeks review. The application is supported by an affidavit where he basically mitigates.
4. During hearing of the application he urged that the period he spent in remand custody was not considered.
5. The application was opposed by the State through Prosecution Counsel, Mr. Kiragu who argues that the sentence was appropriate as the applicant was not remorseful.
6. Section 333(2) of the *Criminal Procedure Code* provides:

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.

7. In the case of *Abamad Abolfathi Mohammed & Another vs. Republic* (2018) the Court of Appeal stated that:-

“Where a convicted person had spent time in custody, that period had to be taken into account while computing his sentence”

8. In the instant case the trial court delivered itself thus:

“I have considered the mitigation by the accused as per the pre-sentencing report herein. I do note the accused is still in denial and has not demonstrated any remorse. I proceed to sentence him to 10 years imprisonment on the alternative charge herein”.

9. The applicant was arrested on October 29, 2012. Subsequently he was released on cash bail of Kshs. 50,000/- on the May 10, 2013. This means that prior to being released on bail he was in remand custody for a duration of seven (7) months. It was a mandatory requirement for the court to take the period into consideration. Having decided to sentence the applicant to ten (10) years imprisonment, the trial court which failed to pronounce itself on that fact should have deducted the seven (7) months from the sentence.

10. The upshot of the above is that the application succeeds to that extent. Therefore, the applicant will serve a sentence of nine years imprisonment, five (5) months, with effect from the date of sentence, the 18th day of November, 2019.

11. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT NAIROBI, THIS 25TH DAY OF MAY, 2023.

L. N. MUTENDE

JUDGE

IN THE PRESENCE:

Applicant

Mr. Kiragu for the State

Court Assistant - Mutai

