



REPUBLIC OF KENYA



**KENYA LAW**  
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**Peter v Republic (Criminal Revision 37 of 2023)  
[2023] KEHC 25895 (KLR) (23 November 2023) (Ruling)**

Neutral citation: [2023] KEHC 25895 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KIBERA  
CRIMINAL REVISION 37 OF 2023  
DR KAVEDZA, J  
NOVEMBER 23, 2023**

**BETWEEN**

**ISAAC KHAKULI PETER ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged and convicted on three counts of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act*. He was sentenced to serve ten (10) years imprisonment for each count. The sentences were to run concurrently.
2. The applicant has now filed a Chamber Summons application dated 9<sup>th</sup> May, 2023 seeking a revision of his sentence. He prays that the court takes into account the period he spent in pre-trial custody and revise his sentence.
3. The application is supported by an affidavit sworn by the applicant, Isaac Khakuli Peter. He avers that the sentence was too harsh and thus seeks leniency from the court.
4. While the application is premised on the provisions of section 333 (2) of the *Criminal Procedure Code*, it invokes the revisionary jurisdiction of this court which is donated by section 362 of the *Criminal Procedure Code* which reads as follows:

“...The High Court may call for and examine the record of any criminal proceedings before any 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.



5. Section 333 (2) of the *Criminal Procedure Code* (Cap 75) Laws of Kenya provides that:

" (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. This court can only intervene to regularize the record to reflect the actual intention of Section 333 (2) of the *CPC* and to avoid any miscarriage of justice. It is however apparent from the record that the trial magistrate considered the time the applicant spent in custody. The trial court stated, "The sentence is pegged on the consideration that the accused stayed in remand for three (3) years and six (6) months to date."

7. The upshot of the above is that the trial court took into account the time the applicant spent in custody. There was no misdirection on the part of the court and thus the application fails.

8. It is so ordered.

**RULING DATED AND DELIVERED VIRTUALLY THIS 23<sup>RD</sup> DAY OF NOVEMBER 2023.**

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**D.KAVEDZA**

**JUDGE**

In the presence of:

Ms.Kibathi for the State.

Applicant absent (VTC).

Joy, Naomi C/A.

