



**Mutai v Republic (Miscellaneous Criminal Application
E005 of 2022) [2022] KEHC 10209 (KLR) (29 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10209 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E005 OF 2022**

**RL KORIR, J
JUNE 29, 2022**

BETWEEN

RICHARD KIPTANUI MUTAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was convicted for the offence of committing an indecent act contrary to Section 11(1) of the [Sexual Offences Act](#) No.3 of 2006, Laws of Kenya. The particulars of the Charge were that on 18th May,2018 in Kiplabotwa Location within Bomet County, he intentionally touched the vagina of MC, a child aged 15 years with his hand. At the conclusion of the trial he was convicted and sentenced to 12 years' imprisonment.
2. The Applicant subsequently appealed to this court against both conviction and sentence. At the conclusion of the appeal, this court upheld the conviction and reduced the sentence to 5 years' imprisonment to run from the date of conviction and sentence being 17th January,2020.
3. The Applicant has now filed the present application dated 14th March,2022 seeking that this court relooks the sentence to take into consideration the period spent in pre-trial custody.
4. In Submissions filed on 16th May, 2022, the Applicant submitted that his right to a fair trial had been violated because the time he spent in pre-trial custody was not taken into consideration. He relied on Section 333(2) of the Criminal Procedure Code to support his submission. At the hearing of the application, the Applicant made further oral submissions and pleaded with the court for leniency stating that his children were suffering as he was now the only parent. He submitted that he had fallen ill while in prison and wished to go home where he would access treatment.
5. The Respondent submitted the Applicant had been convicted by the trial court and sentenced to 12 years' imprisonment for the offence of indecent act. That upon appeal, this court reduced the sentence



to 5 years' imprisonment. The Respondent further submitted that the application was not merited as the Applicant was asking the court to do what it had already done.

6. In a rejoinder the Applicant stated that all he wanted was for the court to include the period he had spent in remand.

7. I have perused the trial court judgment and the judgment and sentence issued by this court. In the Judgment delivered on 28th February, 2022, this court stated thus: -

“59 In the end, I uphold the conviction. I however, set aside the sentence of 12 years' imprisonment and substitute therefor a sentence of 5 years' imprisonment from the date of conviction and sentence being 17th January, 2020”.

8. It is clear therefore that this court had already considered the Applicant's sentence and reduced it substantially. This court became functus officio the moment it delivered the said sentence on appeal and cannot now revisit the said sentence. The Applicant's recourse now lies with the court of appeal.

9. The application is thus dismissed.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 29TH DAY OF JUNE, 2022.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the presence of Mr. Muriithi for the State, Applicant present in person and Kiprotich (Court Assistant)

