



**Aura v Republic (Criminal Appeal E058 & E060 of 2022 (Consolidated))
[2022] KEHC 10431 (KLR) (Crim) (21 June 2022) (Judgment)**

Neutral citation: [2022] KEHC 10431 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)
CRIMINAL
CRIMINAL APPEAL E058 & E060 OF 2022 (CONSOLIDATED)
LN MUTENDE, J
JUNE 21, 2022**

BETWEEN

MICHAEL AURA APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an Appeal arising from the original conviction and sentence
in Criminal Case No. 1265 of 2014 at Chief Magistrate's Court
Makadara by Hon. Stephen Jalang'o – SRM on 15th December, 2017.)*

JUDGMENT

1. Michael Aura, was arraigned following allegations of having defiled a child aged fifteen (15) years.
2. He was taken through full trial, found guilty, convicted and sentenced to serve ten (10) years imprisonment.
3. Aggrieved by the sentence, he appealed. He contended that the trial court failed to comply with Section 333(2) of the *Criminal Procedure Code* (CPC).
4. The alluded to provision of the law provides that:

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.



5. An appellate court is called upon to re-consider a fresh what transpired at trial bearing in mind the fact of having not had the opportunity of seeing what happened then come to an independent conclusion.
6. With this in mind I have re-looked at the record of the trial court which is very clear the learned trial Magistrate stated thus:

“I have considered the mitigation by the accused, the time spent in remand.....”

7. It is apparent that the trial court took into account the period spent in remand custody by the applicant as required by Section 333(2) of the CPC.
8. Therefore, the appeal is bereft of merit. Accordingly it is dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 21ST DAY OF JUNE, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Appellant

Ms. Ntabo - DPP

Court Assistant - Mutai

