



**Rehema v Republic (Criminal Revision E373 of 2021)
[2022] KEHC 10560 (KLR) (Crim) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEHC 10560 (KLR)

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

CRIMINAL

CRIMINAL REVISION E373 OF 2021

LN MUTENDE, J

JUNE 22, 2022

BETWEEN

JULIANA REHEMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Juliana Rehema was charged with offences as follows:

Count I – Conspiracy to defile contrary to Section 157 of the Penal Code. Particulars being that on 19th day of May, 2019 in Kibera Sub-County within Nairobi County, she conspired with another not before court to defile PA a child aged eleven (11) years.

Count II – Gang defilement contrary to Section 10 of the *Sexual Offences Act* No. 3 of 2006. Particulars being that on 19th May, 2019 in Kibera Sub-County within Nairobi County, having a common intention to penetrate the vagina of PA a child aged eleven 11 years, was in the company of another not before court who intentionally caused his penis to penetrate the vagina of the said PA.

2. Having been taken through full trial she was found guilty of both counts, and sentenced as follows:

Count I – to serve three years imprisonment.

Count II – to serve seven years imprisonment.

3. Contented with the conviction and sentence meted out on 1st February, 2021, the applicant did not profer an appeal. However, by an application filed herein on 8th October, 2021, the applicant seeks review of the sentence meted out on the ground that the court did not take into consideration Section 333 (2) of the *Criminal Procedure Code* (CPC).



4. The application is opposed by the State through learned Counsel Mr. Kiragu who argues that the trial court noted that it had considered time spent in custody when sentencing the applicant, but due to the aggravating factors of the offence, it imposed deterrent sentences.
5. I have considered the application, supporting affidavit and arguments by the applicant and the Respondent.
6. Revisional Jurisdiction is conferred upon this court by statute. Section 362 of the CPC provides that:

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.
7. Exercise of the supervisory jurisdiction of the High Court is discretionary. The court is not bound to interfere with the decision of the lower court merely because the applicant is dissatisfied with the order. It behooves the applicant to demonstrate that an error, illegality, or material irregularity exists that calls for interference
8. Section 333(2) of the CPC 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.
9. The trial court which had knowledge and understanding of the law pointed out and recorded the fact of compliance with the provision of the law. However, it is important to look at what is provided by Statute.
10. Section 157 of the Penal Code which is in respect of conspiracy to defile provides that:
 - (1) Any person who conspires with another to induce any woman or girl, by means of any false pretence or other fraudulent means, to permit any man to have unlawful carnal knowledge of her is guilty of a felony and is liable to imprisonment for three years.
 - (2) Any person who conspires with another to induce any man or boy, by means of any false pretence or other fraudulent means, to permit any person to have unlawful sexual connexion with him is guilty of a felony and is liable to imprisonment for three years.
11. Section 10 of the *Sexual Offences Act* provides that:

Any person who commits the offence of rape or defilement under this Act in association with another or others, or any person who, with common intention, is in the company of another or others who commit the offence of rape or defilement is guilty of an offence termed gang rape and is liable upon conviction to imprisonment for a term of not less than fifteen years but which may be enhanced to imprisonment for life.



12. Section 364 (5) of the CPC provides thus:

When an appeal lies from a finding, sentence or order, and no appeal is brought, no proceeding by way of revision shall be entertained at the insistence of the party who could have appealed.

13. It is my considered view that this was a case where the applicant should have exercised her right of appeal. The question as to whether or not the trial court took into account time spent in remand custody as indicted could only be determined on appeal. There is also the question of whether or not the accused should have been convicted on both counts.

14. This being the case I find that issues raised should have been interrogated on appeal. Therefore I decline to grant the order sought.

15. It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI, THIS 22ND DAY OF JUNE, 2022.

L. N. MUTENDE

JUDGE

IN THE PRESENCE OF:

Applicant

Ms. Ntabo for DPP

Court Assistant - Mutai

