



**Kibugi v Republic (Miscellaneous Criminal Application E155 of 2021)
[2022] KEHC 13589 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13589 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E155 OF 2021
GL NZIOKA, J
SEPTEMBER 29, 2022**

BETWEEN

SAMUEL KINYANJUI KIBUGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant was charged with the offence of defilement contrary to section 8(1) of the [Sexual Offences Act](#), as read together with section 8(4) thereof. He was also charged with an alternative count of committing an indecent act with a child contrary to section 11 (1) of the Act. The particulars of each count are as per the charge sheet.
2. The applicant pleaded not guilty to each count and the case proceeded to full hearing. He was subsequently convicted the offence of defilement contrary to section 8(1) and 8(4) of the Act and sentenced to serve 15 years imprisonment.
3. By a Chamber Summons application dated October 14, 2021, supported by an affidavit of even date, the applicant seeks for orders that, the Hon court do invoke the provisions of section 333(2) of the [Criminal Procedure Code](#), and consider the period he spent in custody and revise the sentence meted out accordingly.
4. He avers that, he was in custody from November 20, 2016 to October 7, 2019. That, this period was not taken into account. However, I realize that, the respondent has not responded to the application. Be that as it were, this in my considered opinions is the kind of application the court may needs to consider whether, the trial court considered the subject provisions of section 333(2) of [Criminal Procedure Code](#) or not.



5. Pursuant to the aforesaid, I have considered the record of the trial court of October 5, 2019, wherein the court meted out the impugned sentence. The trial court records reads as follows:-

“I have considered the nature of the offence herein. I have also considered what the accused told the court in mitigation and the period he has spent in remand. I hereby sentence him to serve fifteen (15) years in prison. Right of Appeal 14 days”

6. From the aforesaid, the record indicates that, the period in custody was considered. However, in the case of *Abamad Abolfathi Mohammed & Another V Republic*, [2018] eKLR the Court of Appeal stated as follows

“By dint of section 333 (2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest...”

7. In view of the foregoing the trial court should have clarified whether in the given circumstances the sentence was to run from the date of pronouncement thereof or from the date the applicant was arraigned in court.
8. In view of the aforesaid, I shall give the applicant, the benefit of doubt and order that, the sentence runs from the date he was committed into remand custody.
9. I noted from the file he was in custody from November 24, 2016 to October 7, 2019. That is a period of about 2 years. The two years shall be deducted from his fifteen (15) years imprisonment, but shall not be subject to remission.

For clarity he shall serve a custodial period of thirteen (13) years.

It is so ordered.

DATED, DELIVERED AND SIGNED THIS 29TH SEPTEMBER, 2022.

GRACE L. NZIOKA

JUDGE

3/10/2022

