



**Githinji v Republic (Criminal Revision E141 of 2022)
[2022] KEHC 13864 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13864 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
CRIMINAL REVISION E141 OF 2022
GL NZIOKA, J
SEPTEMBER 22, 2022**

BETWEEN

DAVID MUTHUI GITHINJI APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. The matter herein has been placed before the court on the strength of the notice of motion application filed on 15th September 2022 by the applicant, seeking for review of sentence meted upon him vide Criminal case No Sexual Offence E017 of 2022.
2. The applicant was charged in the subject matter with the offence of sexual assault contrary to section 5(1)(a)(i) as read together with section 5(2) of *Sexual Offences Act* No 3 of 2006. He pleaded not guilty. The case was heard and he was sentenced to serve ten (10) years imprisonment.
3. The application is supported by an affidavit in which the applicant states that, he is remorseful and is ready and willing to serve the community as the court may direct. I further note that, he has filed a memorandum of sentence review and states that, he is not appealing against conviction and sentence but humbly prays that, the sentence be reviewed as he is a first offender and that, the court do exercise its discretion and mete out a lenient sentence, preferably, a non-custodial sentence or community service.
4. Having considered the application in the light of the material placed before the court, I find that, the offence with which the applicant was charged and convicted carries a minimum sentence of ten (10) years; which may be enhanced to life imprisonment as stated under section 5 of the act.
 - (1) Any person who unlawfully
 - (a) penetrates the genital organs of another person with
 - (i) any part of the body of another or that person; or



- (2) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term of not less than ten years but which may be enhanced to imprisonment for life.
5. I note that, the applicant was given the minimum sentence of ten (10) years. In that case, the application for review of sentence is not tenable. I therefore decline to allow it and dismiss it, save for the fact that, I note he was arrested on February 17, 2022 and arraigned in court on February 18, 2022. He was sentenced on the July 26, 2022. Therefore pursuant to the provision of section 333(2) of the *Criminal Procedure Code*, the period of four (4) months he was in custody should be deducted from the ten (10) years imprisonment term.

It is so ordered

DATED, DELIVERED AND SIGNED ON THIS 22ND DAY OF SEPTEMBER, 2022

GRACE L. NZIOKA

JUDGE

Court- In the absence of the parties. Therefore the order herein should be typed and served upon all the relevant parties that is the Applicant, Prisons Authority and Director of Public Prosecution (DPP).

It is so ordered.

GRACE L. NZIOKA

JUDGE

22/9/22

