



**Ochieng v Republic (Criminal Revision E422 of 2021)  
[2022] KEHC 14243 (KLR) (Crim) (25 October 2022) (Ruling)**

Neutral citation: [2022] KEHC 14243 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIROBI (MILIMANI LAW COURTS)  
CRIMINAL  
CRIMINAL REVISION E422 OF 2021  
DO OGEMBO, J  
OCTOBER 25, 2022**

**BETWEEN**

**JOHN EZEKIEL OCHIENG ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant, John Ezekiel Ochieng, has approached this court by way of a Chamber Summons application filed on 30.12.2021. The application filed is for revision under section 362 of the [Criminal Procedure Code](#) and seeks that the sentence be revised to account for the period the applicant spent in remand custody awaiting determination of his trial pursuant to section 333(2) of the Criminal Procedure Code. In the affidavit in support of the application, the applicant has deposed that the said period amounted to 10 months.
2. The applicant has in addition filed mitigation submissions, basically expressing;
  - i) That he is very remorseful
  - ii) That he has undergone professional counseling.
  - iii) That he has reformed.
  - iv) That he has health complications.
  - v) That he required dietary changes.
3. The prosecution side opposed this application on grounds that whereas the sentence ought to have been 10 years imprisonment, the applicant was sentenced to serve 8 years imprisonment. And that the



court duly took note of the period taken in custody of 9 months. Counsel urged the court to dismiss this application.

4. I have considered the 2 rival submissions. The record of proceedings show that the applicant was convicted and sentenced on the alternative charge of committing an indecent act with a child contrary to section 11(1) of the [sexual offences act](#), No. 3 of 2006. The sentence therein is a term of not less than 10 years' imprisonment.
5. This application basically seeks revision of the sentence to reflect the period spent in custody and also on the factors of mitigation as seen above. I have considered the sentencing proceedings before the lower court. It is clear that the applicant raised a very long mitigations in which he raised the same issues he had raised in support of this application. And in passing the sentence, the court clearly stated that it took into account the mitigation of the applicant. The court further noted that it had taken into account the period that the applicant had taken in remand custody.
6. What I get from the record of the proceedings is that the sentence meted out by the trial court was both legal and proper. And the court duly considered the period spent in remand custody by the applicant in passing the sentence. The court therefore clearly satisfied the requirements of section 333(2) of the Criminal Procedure Code.
7. This application of the applicant therefore lacks any merit. I dismiss the same wholly. Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**25<sup>TH</sup> OCTOBER, 2022.**

**Court:**

Ruling read out in court in presence of the applicant (Kamiti Medium) and Ms. Akunja for the state.

**D. O. OGEMBO**

**JUDGE**

**25<sup>TH</sup> OCTOBER, 2022.**

