



REPUBLIC OF KENYA



**DKK v Republic (Criminal Revision E016 of 2021)  
[2022] KEHC 16986 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16986 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
CRIMINAL REVISION E016 OF 2021  
GWN MACHARIA, J  
DECEMBER 20, 2022**

**BETWEEN**

**DKK ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein, DKK, was charged, tried and convicted of the offence of incest by male persons contrary to section 20(1) of the *Sexual Offences Act* No 3 of 2006 in Naivasha Chief Magistrates Court Criminal Case No 19 of 2018. Consequently, he was sentenced to serve ten (10) years imprisonment on May 7, 2019.
2. The applicant has now approached this court *vide* a document titled memorandum of sentence review seeking for review of the said sentence.
3. The application is supported by the applicant's self-sworn affidavit in which he avers that he has already served three years since his incarceration and is now a reformed as well as law abiding citizen. He states that he was a first offender and is very remorseful for the offence. Further, he avers that he comes from a poor background and was the sole breadwinner of his family. He therefore urges the court for a second chance to go and cater to his family who he believes is suffering in his absence.
4. The application was also orally canvassed before this court on May 31, 2021. The applicant urged that the period he spent in remand custody prior to conviction be considered in reviewing his sentence. He also asked that the imprisonment be substituted with a probation. On the other hand, learned state counsel Ms. Serling, submitted that the ten-years jail term be sustained as it was very lenient in the circumstances of the case.



5. Section 362 of the [Criminal Procedure Code](#) provides as follows regarding this courts revisionary powers:-

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purposes 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.”

6. From the above provision, it is clear that the powers of this court in revision of sentences or orders passed by subordinate court only extends to the purposes of satisfying itself to the correctness, legality or propriety of any finding, sentence or order passed by that subordinate court.

7. I have carefully perused the trial court’s record. The applicant was accused of willfully and unlawfully causing his genital organ to penetrate the genital organs of his thirteen years old step daughter, MN. Upon trial, he was convicted of the offence of incest by males. Section 20(1) of the [Sexual Offences Act](#) prescribes a minimum of ten years imprisonment and a maximum of life imprisonment where the female with whom the incest is committed is under the age of eighteen years, as in the instant case. It provides as follows:

“20 (1) Any male person who commits an indecent act or an act which causes penetration with a female person who is to his knowledge his daughter, granddaughter, sister, mother, niece, aunt or grandmother is guilty of an offence termed incest and is liable to imprisonment for a term of not less than ten years: Provided that, if it is alleged in the information or charge and proved that the female person is under the age of eighteen years, the accused person shall be liable to imprisonment for life and it shall be immaterial that the act which causes penetration or the indecent act was obtained with the consent of the female person.”

8. I note that the trial magistrate correctly exercised its discretion in imposing a ten years custodial sentence on the applicant after giving the applicant an opportunity to tender his mitigation and the applicant stated he had nothing to say. The learned trial magistrate was therefore very lenient in the circumstances. I say so while well aware that in [Maingi & 5 others v Director of Public Prosecutions & another](#) (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment), Justice Odunga recently held that courts are at liberty to impose sentences prescribed under the [Sexual Offences Act](#) provided they are not deemed to be the mandatory minimum sentences.

9. Consequently, this court finds no merit in the applicant’s application. The same is hereby dismissed. However, I order that the period of about one year two months that the applicant spent in remand custody be taken into account in the computation of his sentence as per the provisions of section 333(2) of the [Criminal Procedure Code](#). It is so ordered.

**DATED AND DELIVERED AT NAIVASHA THIS 20<sup>TH</sup> DECEMBER, 2022.**

**G.W. NGENYE-MACHARIA**

**JUDGE**

**In the presence of:**

1. Applicant in person.

2. Mr. Michuki For the Respondent.

