



**Kariuki v Republic (Miscellaneous Criminal Application E034 of 2021)
[2022] KEHC 16982 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16982 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E034 OF 2021
GWN MACHARIA, J
DECEMBER 20, 2022**

BETWEEN

GERALD KURIA KARIUKI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

RULING ON REVISION OF SENTENCE

1. The applicant herein moved the court *vide* a home-made notice of motion filed on February 11, 2021 seeking that his sentence be reviewed. He supported the application with an affidavit sworn on February 9, 2021.
2. The applicant was charged with the offence of rape contrary to section 3(1) of the *Sexual Offences Act*, No 3 of 2006. It was alleged that on the night of 26th and October 27, 2016 at Maai-Mahiu township in Naivasha sub-county within Nakuru county, intentionally and unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of MWW without her consent. After a full trial, the applicant was found guilty, convicted and sentenced to serve 10 years imprisonment.
3. During the hearing of the application, the applicant who was in person only submitted on one prayer, namely that the court considers the period he was in remand prior to sentencing.
4. His prayer is premised on section 333(2) of the *Criminal Procedure code* which 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 conclude 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.”

5. In rendering the sentence, the learned trial magistrate stated as follows:

“I have considered the nature of the offence as well as the circumstances surrounding the offence. Accused person sexually abused the complainant who was a stranger leaving her traumatized for her entire life. I have also considered the fact that accused is a 1st offender and has been in custody since 2016. In the upshot I shall sentence accused to serve ten (10) years imprisonment.”

6. There is no doubt that the proviso to section 333(2) above is couched in mandatory terms; that in sentencing, the trial court ought to take into account the period an accused was in remand custody prior to sentencing. A simple glance at the sentencing ruling concludes that the learned trial magistrate complied with this provision. She considered that the applicant herein was in remand custody since 2016, and I believe that that is the reason she imposed the minimum mandatory sentence prescribed under section 3(3) the *Sexual Offences Act*.

7. Consequently, this is an application without merit and the same is dismissed.

8. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 20TH DECEMBER, 2022.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

Applicant in person.

Mr. Michuki for the Respondent.

