

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION NO. 242 OF 2019

HASSAN ARERO KENU..... ACCUSED

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....REPUBLIC

RULING

The applicant HASSAN ARERO KENU, filed this application herein on 20.9.2019. The application, seeks that this court do issue orders of revision to revise his sentence to account for the period he spent in custody awaiting determination of his case. The application is brought under section 333(2) of the Criminal Procedure Code. The applicant does not however state the specific period he spent in custody awaiting trial.

In response to the application, Ms. Akunja, conceded that on sentencing the applicant to 10 years imprisonment. On 26.1.2018, the trial court did not take into account the period of 7 months that the applicant had spent in custody since his arrest on 17.5.2017.

I have considered his application and the response by counsel for the state. Section 333(2) of the Criminal Procedure Code, at its proviso, state,

“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.”

The sentence of the lower court ought therefore to have taken into account the period the applicant spent in custody pending the determination of his case. From the records of the lower court, the applicant was charged on 17.5.2017. He was sentenced on 26.1.2018. In the sentencing proceedings the court clearly noted that it took into account the mitigation of the applicant, and also the fact that the applicant had been in custody. The court then formed the opinion that he would because of this be given the minimum sentence.

The applicant had been convicted of the offence of attempted defilement contrary to section 9(1) and (2) of the Sexual Offences Act. At the said section of the Act (Sentencing) the sentence provided is one of imprisonment for a term of not less than 10 years. The import of this is that the sentencing court would retain its discretion to mete out a sentence more severe than the minimum prescribed of 10 years.

The trial court sentenced the applicant to 10 years imprisonment. This is the minimum sentence provided for under the law for the offence the applicant faced. The court went ahead to explain why it meted out the minimum sentence. That it was upon considering the mitigation of the applicant and the period he had taken in custody.

This court is therefore convinced that the trial court duly considered the period spent in custody and therefore satisfied the requirements of section 333(2) of the Criminal Procedure Code. this application of the applicant filed herein on 20.9.2019 lacks in merit. I dismiss the same. For avoidance of doubt, the applicant shall serve his sentence as ordered by the trial court. Ordered accordingly.

D. O. OGEMBO

JUDGE

23.3.2021.

Court:

Ruling read out in open court (online) in the presence of the applicant and Mutuma for state.

D. O. OGEMBO

JUDGE

23.3.2021.