



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION NO. 278 OF 2019**

**PETER OLWENYI.....ACCUSED**

**VERSUS**

**DIRECTOR OF PUBLIC PROSECUTIONS..... REPUBLIC**

**RULING**

The applicant PETER OLWENYI, filed an application herein on 24.10.2019 seeking revision of his sentence. The application, principally brought under section 333(2) of the Criminal Procedure Code, seeks that this court do revise his sentence so as to account for the period he spent in remand custody from 16.11.2015 to 16.10.2017, when he was sentenced to serve 8 years imprisonment.

Ms. Akunja, counsel for the state opposed this application. Counsel submitted that during sentencing the court took into account the period he took into account the period he took in custody and thereafter reduced the sentence from 10 years to 8 years imprisonment. Counsel urged that the application be dismissed.

This application is primarily brought under section 333(2) of the Criminal Procedure Code, which at the proviso, directs that wherein the accused has been in custody prior to the date of sentence, then the sentence ought to take into account such period that the accused has been in custody awaiting determination of his case.

I have considered the records and the proceedings of the lower court. The applicant took plea on 17.11.2015. He was convicted and sentenced on 16.10.2017. In the sentencing proceedings the court duly noted that it took into account the mitigation raised by the accused, the Probation Officer's report and the period that the applicant had taken in custody awaiting conclusion of his case. The court went further that this formed its opinion in meting out a sentence that is less than the minimum sentence prescribed in law. Whereas the sentence prescribed under section 11(1) of the Sexual Offences Act is a term of not less than 10 years imprisonment, the court went ahead to sentence the applicant to serve 8 years imprisonment (Act to counts 3 and 4)

The trial court, clearly took into account the period spent in custody in it's sentence. The applicant cannot therefore seek the same orders. It is for this reason that I find the application of the applicant filed herein on 24.10.2019 totally lacking in merit. I dismiss the same. I order that the applicant shall serve his sentence as ordered by the trial court.

**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.**