

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HC. MISC. CR. APPLICATION NO. 65 OF 2019

IN THE MATTER OF SECTION 333(2) OF THE CRIMINAL PROCEDURE CODE

JULIUS MAINGI MUINDE.....APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

RULING

1. Before me is a Notice of Motion filed by the applicant on 11th December 2019, seeking that his sentence be reviewed pursuant to section 333(2) of the Criminal Procedure Code (cap.75).
2. The application was filed with a supporting affidavit, in which the applicant deponed that in a judgment in Tawa SRM Sexual Offence No. 6 of 2017 passed on 4/7/2017, he was imprisoned for ten (10) years for attempted defilement.
3. The applicant has through this application urged this court to factor the period he was in remand during trial, in the prison sentence as provided for under section 333(2) of the Criminal Procedure Code.
4. In pursuit of his application, the applicant filed written submissions. On their part, the Director of Public Prosecutions through Senior Principal Prosecuting Counsel Ms. Gakumu did not oppose the request of the applicant for the sentence review to take into account the 4 months period the applicant was in custody during the trial. Ms. Gakumu further informed the court that the applicant had even withdrawn his appeal to pursue the present application.
5. I have considered the matter and note that this court has also been availed a Probation Officer's report filed by S.M Munyasya dated 23/3/2021, which has favourable recommendations with regard to sentence.
6. Section 333(2) of the Criminal Procedure Code (cap.75) contains the following provisos –

“Provided that where the person sentenced under section (1) has prior to sentence been held in custody, the sentence shall take into account the period spent in custody.

7. On my part, I find no reason to refuse the request of the applicant to review the sentence, as the trial court did not factor the period in custody in sentencing as required under section 333(2) of the Criminal Procedure Code (cap 75). The applicant was in custody for 4 months during trial and the trial court should have considered the 4 months in computing the sentence. I thus order that the applicant's prison sentence of 10 years imprisonment, be and is hereby reduced by the four (4) months he was in custody. The applicant's sentence is thus 9 years and 8 months. It is so ordered.

DELIVERED, SIGNED & DATED THIS 28TH DAY OF JULY, 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE