

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL REVISION CASE 256 OF 2019

FREDRICK MUTUKU NGEMU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The applicant, **FREDRICK MUTUKU NGEMU** has filed a Notice of Motion Application herein on 7.10.2019. the application, based on section 333(2) of the Criminal Procedure Code, seeks review of his sentence. The application does not disclose much information, but seeks that the period spent in remand be factored in the sentence. He stated that he was arrested on 5.7.2015 and was convicted on 8.2.2019, and was never on bond.

The prosecution has opposed this application. That he was arrested on 15.7.2015 and charged on 20.7.2015 and later sentenced to serve 10 years' imprisonment on 8.2.2019. That the penalty provided for in law is not less than 20 years, and that the trial court duly took into account the time spent in custody. Counsel prayed that this application be dismissed.

I have considered the submissions of the applicant and also the response from the Respondent. I have also carefully considered the proceedings of the lower court with specific focus on the sentencing proceedings of 8.2.2019.

Section 333(2) at the proviso dictates that the period the accused has spent in remand custody while awaiting trial out to be accounted for in the sentence. The applicant faced a charge of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act, No. 3 of 2006. Under this section, the sentence to be meted out is a term of not less than 20 years imprisonment. The applicant herein was sentenced to serve 10 years imprisonment. The sentence proceedings also clearly show that the trial magistrate duly considered the mitigation of the applicant and also the period he has spent in custody pending conclusion of his trial. I am therefore convinced that the trial magistrate in sentencing the applicant, duly satisfied the provisions of section 333(2) of the Criminal Procedure Code. This application of the applicant filed in this court on 7.10.2019 lacks any merit. I accordingly dismiss the same.

D. O. OGEMBO

JUDGE

26.7.2021.

Court:

Read out in presence of the applicant (Kitengela Prison), and Mr. Kiragu, counsel for the state.

D. O. OGEMBO

JUDGE

26.7.2021.