

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MAKUENI

HCCR REV. NO. E017 OF 2020

THOMAS KIBUTHU MELELU.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. This is a request for review of sentence brought through a Chamber Summons. It is an application requesting for revision of sentence pronounced in Makindu PM Criminal Case No. 514 of 2013 to take account of section 333(2) of the Criminal Procedure Code, to factor the 2 year period in custody during trial.
2. The application is supported by an affidavit of the applicant, in which, it was deponed that the trial court did not take into account the provisions of section 333(2) of the Criminal Procedure Code in sentencing him.
3. The learned Prosecuting Counsel Ms. Gitau in her submissions opposed the request for review of sentence and stated that the offence of unnatural conduct contrary to section 162(a) of the Penal Code deserved a deterrent sentence. Counsel added that the applicant was in custody for one year and not two years during trial as claimed by him.
4. This court has been availed the trial court proceedings and file. I note that the applicant was charged in 2013, convicted and sentenced to 14 years imprisonment in 2014. Since then, there is no indication that he made any effort to appeal.
5. He has now come to this court for revision of sentence, which is a discretionary power of this court under section 362 of the Criminal Procedure Code. Revision is not granted as a matter of right but under the discretionary power of the court in order to do justice to parties, as provided under section 362 through to 364 of the Criminal Procedure Code.
6. Having perused and considered the proceedings herein, the judgment and the sentence imposed, it cannot be said that the learned magistrate did not take into account the provisions of section 333(2) of the Criminal Procedure Code in sentencing, as the magistrate took into account the mitigating factors, in this case where the applicant sodomised an old man and was very violent to those who tried to intervene and arrest him.
7. I thus find no basis for exercising this court's revision powers and will dismiss the application.
8. Consequently, I find no merits in the application and dismiss the same.

DELIVERED, SIGNED & DATED THIS 19TH DAY OF OCTOBER 2021, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE