



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CRIMINAL REVISION NO. 166 OF 2019

FELIX ISADIAAPPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The matter now comes up for the application of the applicant, FELIX ISADIA filed herein on 4.6.2019(undated). The same, seeks a review of the sentence herein. It is brought under section 333(2) of the Criminal Procedure Code that the time the applicant spent in custody awaiting the determination of his trial, be considered in the sentence. The prosecution conceded that in case the trial court did not account for such time spent in custody then the application would not be opposed.

This application is made basically under section 333(2) of the Criminal Procedure Code which at its proviso states;

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

In deciding this application, it is therefore imperative to consider the record from the trial court. The applicant faced a charge of attempted defilement contrary to section 9(1) as read with section 9(2) of the Sexual Offences Act No. 3 of 2006. Count II was of Indecent Act with a child. The applicant had been remanded in custody from 2.11.2016 till the date of sentence on 10.8.2018, a period of about 21 months.

The sentencing proceedings of the court of 10.8.2018 do not reflect if the trial magistrate factored in the period the applicant had spent in custody. It ought to have done so. It is for this reason that I find the application of the applicant for revision of sentence as having merit. I allow the same. I order that the applicant do serve a term of 10 years imprisonment from the date of sentence on 10.8.2018, less a period of 21 months that he spent in custody. Orders accordingly.

D. O. OGEMBO

JUDGE

18.11.2021.

Court:

RULING READ OUT IN COURT (ON-LINE) IN PRESENCE OF THE APPLICANT (KITENGELA PRISON) AND MS. AKUNJA FOR THE STATE.

D. O. OGEMBO

JUDGE

18.11.2021.

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FROM: HIGH COURT APPELLATE SIDE

TO: @ G.K. PRISON ALLO. NAIROBI WEST PRISON

INFO: PHQ.

18TH NOVEMBER 2021

HCCR APPEAL. NO. 150 OF 2019

HIGH COURT CRIMINAL APPEAL NO. 150 OF 2019 ORIGINATING FROM THE CHIEF MAGISTRATE'S COURT AT MAKADARA CRIMINAL CASE NO. 1605 OF 2017. APPELLANT ALEX MUNGI MBUGUA (NWP/1259/018/LS) APPLICANT DO SERVE HIS IMPRISONMENT TERM(S) AS ORDERED BY THE TRIAL COURT LESS THE PERIOD OF 1 YEAR THAT HE SPENT IN CUSTODY AWAITING DETERMINATION OF HIS CASE.

DEPUTY REGISTRAR