



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KABARNET**

**MISC. CRIMINAL APPLICATION NO. 27 OF 2019**

**SAMUEL KIBET BONDE.....APPELLANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**[An appeal from the original conviction and sentence of the Principal Magistrate's Court**

**at Kabarnet Cr. Case no. 483 of 2016 delivered on the 10<sup>th</sup> day of July, 2017**

**by Hon. J. L. Tamar, PM]**

**RULING**

1. By Notice of Motion dated 18<sup>th</sup> October 2019, the appellant principally petitions the court as follows:

***“The Honourable court be pleased to order that my 10 years sentence be made to begin from the first day that I was arraigned before the court and include the period spent in remand custody as under section 333 (2) of the Criminal Procedure Code.”***

2. The appellant was on 19<sup>th</sup> June 2019 convicted and sentenced to serve imprisonment for ten (10) years by this court for the offence of indecent act with child contrary to section 11(1) of the sexual Offences Act, which had been charged as an alternative charge to the offence of incest by a male contrary section 20 (1) of the Sexual Offences Act conviction for which was quashed on appeal and the sentence of imprisonment for twenty (20) years imposed by the trial court.

3. The DPP does not oppose the application for revising the sentence of imprisonment to commence or take into account the period of 1 year two months before the conclusion of the trial.

4. The court has perused the trial court record which shows that the appellant was charged before the court and remanded in custody to await his trial on 10<sup>th</sup> May 2016 and that the trial concluded with the sentence of the trial court on 10<sup>th</sup> July 2017, making a period of pre-trial detention of 1 year 2 months.

5. Section 333 (2) Proviso of the Criminal Procedure Code provides that in considering a sentence of imprisonment the court shall take into account any period of the accused's pre-trial detention as follows:

***“(2) Subject to the provisions of section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.***

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

**Order**

6. Accordingly, pursuant to section 333(2) of the Criminal Procedure Code, the appellant's **sentence of imprisonment for ten (10) years** passed by this court on 19<sup>th</sup> June 2019 for the alternative charge of indecent act with child contrary to section 11 (1) of the Sexual Offences Act, shall commence on **10<sup>th</sup> May 2016** when he appellant was first remanded to await his trial.

Order accordingly.

**DATED AND DELIVERED THIS 27<sup>TH</sup> DAY OF FEBRUAY 2020.**

**EDWARD M. MURIITHI**

**JUDGE**

**Appearances:**

Appellant in person.

Ms. Muriu, Prosecution Counsel for the Respondent.