



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CRIMINAL APPEAL NUMBER 108 OF 2016

STEPHEN NJIRU KARANJA.....APPELLANT

VERSUS

REPUBLIC RESPONDENT

R U L I N G

1. The appellant Stephen Njiru Karanja was on 13th October 2014 found guilty of two (2) counts; **Attempted Defilement Contrary to Section 9(1) as read with 9(2) of the Sexual Offences Act and Assault causing actual bodily harm Contrary to Section 251 of the Penal Code.**
2. He was convicted and sentenced on the first count to ten (10) years imprisonment and on the second count twelve (12) months imprisonment.
3. He comes before this court not on appeal, but seeking review of his sentence in that though he had been in custody for one (1) year before he was sentenced the court did not take into consideration that period as required by **Section 333(2) of the Criminal Procedure Code.**
4. The state has no objection to that application, as according to Ms Nyakira, she had no problem with the court taking that into consideration.
5. The applicant also urges the court to consider reducing his sentence on account of illness. This is strongly opposed by the state on the ground that the offences he committed deserved that punishment.
6. The record shows that plea was taken on 22nd October 2013, On 23rd October 2013 he was granted bond of Ksh. 300,000/= with surety of similar amount or cash bail of Ksh. 200,000/=. However the same record shows that his release was objected to by the investigating officer on the ground that his relatives were threatening the complainant. This was on 12th November 2013. The trial court did not state whether or not it was cancelling his bond terms, but the record simply shows that the family of the accused was directed to stay away from the family of the complainant.
7. Be that as it may the applicant remained in custody from 22nd October 2013 to 13th October 2014 when he was convicted and sentenced. The proviso to **Section 333(2) of the Criminal Procedure Code** provides that where a person sentenced has been held in custody prior to such sentence, the sentence shall take into account the period spent in custody.
8. In this case, the trial court did not indicate that it had taken into account the period the applicant has stayed in custody see **Bethwel Wilson Kibor v Republic [2009] eKLR** where the appellant had been in custody for nine (9) years before sentence and was sentenced to five (5) years imprisonment for manslaughter. The Court of Appeal (*E. O. Okubasu, E. M. Githinji, DKS Aganyanya*) JJA, found that the trial judge had not indicated he had considered the period already spent in custody, and reduced the appellant's sentence to the period already served.
9. I have considered the appellant's plea and the strenuous objections by the state. The appellant has not provided any evidence of illness. However he deserves his reduction of sentence by the period in custody.
10. I allow his application and reduce his sentence to the extent that it is to be counted from **22nd October, 2013.**
11. Orders accordingly

Delivered, Dated and Signed at Nakuru this 23rd April day of 2020.

Mumbua T. Matheka

Judge

In the presence of: - Via ZOOM

Edna Court Assistant

Ms. Odera for state

Appellant present