

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO.159 OF 2019

HARON THUKU KINYANJUI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, Haron Thuku Kinyanjui was convicted of the offence of **attempted defilement** contrary to **Section 9(1)** as read with **Section 9(2)** of the **Sexual Offences Act**. He was sentenced to serve ten (10) years imprisonment on 22nd July 2016. The Applicant has applied to this court to have the period that he was in remand custody prior to his conviction to be taken into consideration while computing the period that he is to serve. The Applicant stated that he was in remand custody for a period of approximately eight (8) months prior to his conviction. This period was not taken into account when he was sentenced by the trial court. Ms. Kibathi for the State was not opposed to this period being taken into account by the court.

Section 333(2) of the **Criminal Procedure Code** requires the sentencing court to take into account the period that a convict was in pre-trial detention prior to his conviction when considering the sentence to be meted on him. In the present application, it was clear that the trial court did not take into account the period of eight (8) months that the Applicant was in pre-trial detention prior to his conviction. This court shall take that period into account as a result of which the sentence meted on the Applicant of ten (10) years imprisonment shall be reduced by a period of eight (8) months.

In the premises therefore, the Applicant's application succeeds. He shall serve a custodial sentence of nine years and four months with effect from 22nd July 2016. It is so ordered.

DATED AT NAIROBI THIS 27TH DAY OF MAY 2020

L. KIMARU

JUDGE