



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE NO. 528 OF 2020**

**PETER ORONI MARWA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The Applicant **PETER ORONI MARWA** filed a Notice of Motion dated 15<sup>th</sup> June, 2020. He seeks the following orders:

**(1). That I was the accused person in the sexual offence case No. 77 of 2015 charged with the offence of committing indecent act with a child contrary to section 11(1) of the sexual offence Act.**

**(2) That upon taking plea of not guilty on 21<sup>st</sup> December 2015, I proceeded with the case until when the matter was determined on 5<sup>th</sup> March 2020.**

**(3) That I was found guilty as charged and I was finally convicted to serve four (4) years imprisonment on 5<sup>th</sup> March 2020.**

**(4) That I was satisfied with the sentence but due to the current corona virus pandemic and my health status, I would beseech this honourable High Court to overlook and reduce my sentence to preferably two (2) years imprisonment taking into consideration the time I had served in remand custody.**

2. He also filed a supporting affidavit in which he gives a summary of the case against him before the lower court. He deposes that he was convicted of indecent act with a child contrary to **section 11 (1) of the Sexual Offences Act. (SOA)**. He deposes that he was sentenced to 4 years' imprisonment, and that his plea is for freedom considering the period he spent in custody and the period he has served.

3. The Appellant in his oral submissions urged the court to consider the 4 years and 5 months he spent in custody pending hearing of his case, and the 7 months he has served his sentence and set him free. He said he has 2 young children and a wife who wholly depended on him.

4. Ms. Chege, learned Prosecution Counsel urged that the Applicant was convicted of the alternative charge of indecent act with a child and sentenced to 4 years' imprisonment. Counsel urged the court to dismiss the application as the sentence the charge called for was a minimum of 10 years' imprisonment, and that the trial court considered the period the Applicant had spent in custody pending trial. Regarding his TB illness, counsel submitted that she saw the treatment document he attached and urged that he was well taken care of while in prison.

5. I have considered the application before the court. The Applicant was arraigned in court on 21<sup>st</sup> December, 2015 with a defilement charge contrary to **section 8(3) of the SOA**. In the alternative he was charged with indecent act with a child contrary to **section 11 (1) of the SOA**. He was convicted of the alternative charge and sentenced to 4 years' imprisonment on the 6<sup>th</sup> March, 2020. In total to date he has spent 4 years 10 months in prison custody. He has served only 6 and a half months of his prison term.

6. The Applicant said he was on treatment for TB. He has urged the court to order his release for reason, in addition to the whole period spent in prison, he fears for his life due to his health condition and the covid-19 pandemic.

7. I have considered the application and all the arguments made in support of the application. I have also considered the submission of the learned Prosecution Counsel. The court's powers of revision are limited to satisfying itself as to the correctness, legality or propriety of any findings, sentence, or order recorded or passed and as to the regularity of any proceeding of any such subordinate court and in exercising supervisory jurisdiction under **Article 165(6) of the Constitution** the court does not exercise appellate jurisdiction and therefore cannot review or re-weigh evidence upon which the determination of the lower court was based and can only upset an order which it considers

erroneous, without jurisdiction and constitutes gross violation of the fair administration of justice. (See **Chris Phillip Obure v Republic [2020] eKLR**).

8. The offence for which he was convicted calls for a minimum sentence of 10 years' imprisonment. He got away with less than half the sentence prescribed. Even if the period he spent in pre-trial detention is factored, he still will serve a period below the minimum sentence prescribed for the offence.

9. As for his health condition and the covid-19 pandemic, the records he has attached in support of his application shows that he is under treatment for his condition, and that he gets all the medication he requires. As for the covid-19, whether in prison or out, he would be in similar position. I do not think he is any worse being in prison than outside.

10. I agree with the learned prosecution counsel that the learned trial magistrate must have borne in mind all these factors before passing sentence.

**11. Having come to the conclusion I have of this case, I find no merit in this application. Accordingly, I dismiss it in its entirety.**

**DELIVERED THROUGH TEAMS THIS 22<sup>ND</sup> DAY OF OCTOBER, 2020.**

**LESIT, J**

**JUDGE**