

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MALINDI

CRIMINAL REVISION NO. 155 OF 2020

ALEX MENZA GONA..... APPLICANT

-VERSUS-

REPUBLIC.....RESPONDENT

Coram: Justice Reuben Nyakundi

Applicant in person

Mr. Alenga for the State

RULING

The applicant **Alex Menza Gima** was tried and convicted by the Learned trial Magistrate for the offence of defilement contrary to Section 8 (2) of the Sexual Offences Act. He was sentenced to a period of twenty years.

He preferred an appeal to the High Court and on appeal on both conviction and sentence was dismissed. According to the applicant before this Court he is aggrieved by the failure of the Learned trial Magistrate not to take into account the provisions of Section 333 (2) of the Criminal Procedure Code in giving credit to the two year period he spent in remand custody.

Determination

From the record and Judgments of both Courts, there is ample evidence that the Learned trial Magistrate did not comply with Section 333 (2) of Criminal Procedure Code to take into account the period of 2 years the applicant spent in lawful custody pending hearing and determination of the charge.

It is the Law that the period in remand custody be taken into account and be credited in the final sentence imposed by the trial Court. The defect is apparent on the face of the record to warrant exercise of revisionary power of the Court to vary the order on sentence to the extent it commence with effect from 25.10.2006.

Here a purposive approach to the remedy under Section 333 (2) of the Code is not to deprive the convict fundamental right to liberty and the right to be deprived of it save in accordance with the principles of fundamental justice.

The end result is that the initial error under Section 333 (2) of the Code is curable by the operation of Section 382 of the Criminal Procedure Code to cure the illegality thereof in which an injustice would be occasioned to the applicant.

DATED, SIGNED AND DELIVERED AT MALINDI THIS 16TH DAY OF DECEMBER 2020

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R. NYAKUNDI

JUDGE