

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MACHAKOS

Coram: D. K. Kemei - J

MISCELLANEOUS CRIMINAL REVISION APPL NO. 19 OF 2019

JOSEPH MUSYOKA KIMULI.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Joseph Musyoka Kimuli, the Applicant herein was charged with defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act.
2. The Applicant pleaded guilty and was convicted on his own plea of guilty and that the trial Court sentenced him to serve 10 years imprisonment in respect of the offence of attempted defilement.
3. The Applicant was aggrieved by the sentence and filed the instant application that he sought to invoke section 333(2) of the Criminal Procedure Code and urged the court to consider the time spent in custody before conviction that was from 25.7.2016 to 28.11.2016.
4. Having had due regard to section 333 (2) of the Criminal Procedure Code together with **Article 165(6)** and **(7)** of the Constitution and section **362** as read together with section **364** of the Criminal Procedure Code I find that the application by the applicant has merit. I note that the charge sheet indicates that he was arrested on 25.7.2016 and there was no indication that the applicant was out on bond. The period spent in custody should be factored in the sentence imposed as per the provisions of section 333(2) of the Criminal Procedure Code. The trial court ought to have factored the said period during the sentencing of the applicant. This then warrants this court to interfere with the said sentence by reviewing the same. Learned counsel for the Respondent is not opposed to the application by the applicant.
5. In the result the applicant's application filed on 17.6.2019 has merit. The same is allowed. The sentence of 10 years is hereby reviewed to the extent that the same shall commence from the date of arrest namely 25.7.2016.

It is so ordered.

Dated and delivered at Machakos this 14th day of December, 2020.

D. K. Kemei

Judge