

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 676 OF 2018

PETER KAMANDE MBUGUA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. Peter Kamande Mbugua, hereafter the Applicant filed the present application by of a Chamber Summons dated 7th June, 2018 seeking the review of the sentence so that the period of 18 months spent in custody prior to the sentence be taken into account. The application was supported by his own affidavit. He deponed that he was suffering from TB and had been admitted twice to the clinic at Kenyatta Hospital.

2. Ms. Akunja did not oppose the application. She submitted that the court is under a duty to take into account the period the convict spent in remand custody before passing the sentence.

3. The Applicant was convicted of committing an indecent act with a child on 17th March, 2017 before being sentenced on 5th April, 2017. The court sentenced the Applicant to 10 years imprisonment and among the factors considered in its sentencing was the time spent in remand.

4. Sentencing is at the discretion of the trial court although under the Sexual Offences Act the discretion is fettered by the provision of mandatory minimum sentences. Sitting under its revisionary powers, this court will not interfere with a sentence passed by the trial unless it is of the view that the trial court improperly exercised its discretion in sentencing. See Riyaadh Abdul Hafedh v Republic [2006] eKLR where the court stated-

“While exercising its discretion in sentence, it is advisable that reasons be given on record to show the trial court considered to determine the kind of sentence awarded.”

5. In the present case, the court did sentence the Applicant to the minimum available sentence of 10 years imprisonment after considering the remand custodial term, the favorable pre-sentencing report and the mitigating circumstances. What the court failed to state was whether, even if it took into account the period spent in custody, that that period would be deducted from the sentence passed. The mere fact that the Sexual Offences Act sets minimum sentences is not a bar to reducing the sentence by the time spent in custody. Conversely, if the court was of the view that the sentence should not be reduced by the time spent in custody, it should state so.

6. The trial court herein improperly exercised its discretion by failing to consider that the sentence should be reduced by time spent in custody. After all, the Applicant was a first offender and the Pre-bail Report was favourable. Accordingly the application succeeds. I uphold the sentence passed of ten years but order that it shall be reduced by two years six months and twenty days, being the period the Applicant was in custody before the sentence was passed. It is so ordered.

DATED and DELIVERED 30TH DAY OF OCTOBER, 2018.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

1. Applicant in person.

2. Mr. Momanyi for the Respondent.