

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT EMBU

CRIMINAL REVISION NO. 1 OF 2016

DANSON MURIITHI IRERI..... APPLICANT

VERSUS

DIRECTOR OF PUBLIC PROSECUTIONS.....RESPONDENT

RULING

1. The applicant seeks for revision of sentence of ten years imprisonment imposed on him by Principal Magistrate Siakago on 17/07/2012 upon conviction on the offence of defilement of a child contrary to Section 8(1) of the Sexual Offences Act N. 3 of 2006.

2. The grounds supporting the application are that he has now reformed after serving about half the sentence. He has also undergone vocational training courses in prison for Mason Grade II and III whose certificates he has attached.

3. The applicant also claims that his prolonged stay in prison will have an adverse effect to the welfare of his family. His prayer is for conversion of the remaining prison term to a non-custodial sentence or to review the whole sentence downwards.

4. In this case, the complainant was aged 16 years at the time of the offence. Section 8(1) as read with Section 8(4) of the Act is applicable to this case. The sentence provided in Section 8(4) is imprisonment for not less than 15 years.

5. The applicant was sentenced to 10 years imprisonment which is not within the law. The section gives a minimum sentence of not less than fifteen (15) years which the court ought to prescribe in compliance with the law. The learned magistrate failed to comply as required. However, since the applicant is the one who moved the court in way of revision, this court will leave the sentence undisturbed.

6. The applicant has not faulted the magistrate as having committed any illegality, irregularity or impropriety in his finding, sentence or order which is the condition required to be established before revision can be done in tandem with the provisions of Section 362 of the Criminal Procedure Code.

7. The offence of defilement is a very serious offence and it provides for a minimum sentence which the magistrate did not mete out. It noted that the applicant has already served half that sentence.

8. I find that the conditions under Section 362 of the Criminal Procedure Code have not been satisfied.

9. The application is therefore not merited and it is dismissed accordingly.

DATED AND SIGNED AT EMBU THIS 12TH DAY OF APRIL 2017.

F. MUCHEMI

JUDGE