

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CRIMINAL DIVISION

CRIMINAL REVISION NO. 118 OF 2016

D S.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant was charged with attempted incest contrary to **Section 20(2) of the Sexual offences Act No. 3 of 2006**. It was alleged that on the 17th August 2009 at 6.00 am at Eastleigh Section 3 in Nairobi within Nairobi Area Province, being a male person attempted to cause his penis to penetrate the vagina of H.S who was to his knowledge his daughter aged 14 years. He was convicted and sentenced to serve 20 years imprisonment on 24/4/2010.

He has come to this court seeking a revision of the sentence. He pleads that he has reformed having learnt some life support skills in prison including theology that has elevated him to the position of a Senior Pastor at the Protestant Church at Kamiti Prison. He urges the court to release him so that he can be of better use to the society. He also urges the court to consider the period he spent in remand of about two years.

Learned State counsel, M/s Aluda did not oppose the application on grounds that if the period the Applicant spent in remand together with the remission of sentence were taken into account, he will have served sufficient sentence.

The Applicant took plea on 3rd September, 2009. He was in remand throughout the period of the entire trial. Having been sentenced on 24/4/2010 means that he spent a one year and seven months in remand. If this period is added to the time already served, it adds up to nine years two months spent in custody. The remission period is a third of the sentence, which in this case translates to five years.

Considering that the law provides for a minimum of ten years imprisonment, it is my view that the Applicant has served sufficient sentence. Accordingly, I set aside the remainder of the sentence. I substitute it with an order that the Applicant be and is hereby forthwith set free. It is so ordered.

Dated and Delivered at Nairobi this 20th day of November, 2017.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of:

- 1. Applicant present in person*
- 2. M/s Akuja for the Respondent.*