



**Wakuthe v Republic (Criminal Revision 175 of 2023)
[2025] KEHC 4239 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEHC 4239 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERUGOYA
CRIMINAL REVISION 175 OF 2023
EM MURIITHI, J
APRIL 3, 2025**

BETWEEN

MARTIN WACHIRA WAKUTHE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant filed a Notice of Motion on 8th September, 2023 seeking resentencing of his 20 years' imprisonment sentence. The DPP does not oppose the application.
2. The applicant was charged with the offence of Contrary to Section 8(1) as read with Section 8 (3) of the *Sexual Offences Act* No 3 of 2006, with Particulars of the offence being that on diverse dates between 19th and 24th April, 2018 at [Particulars withheld] Village, [Particulars withheld] Sub-location [Particulars withheld] location in Kirinyaga East sub- County intentionally and unlawfully did cause his penis to penetrate the vagina of KWN a child of 12 years.
3. He was arrested on 24th April, 2018.
4. He pleaded not guilty and was taken through full trial. He was found guilty and convicted and sentenced on 20th September, 2018 to 20 years' imprisonment.
5. He filed an appeal under Criminal Appeal No 53 of 2018 and withdrew appeal in regard to conviction on 1st August, 2023.
6. He pursued an appeal on sentence and the appeal was allowed on 24th October, 2023. The sentence of 20 years was set aside and substituted with fifteen (15) years imprisonment.
7. This application was filed on 8th September, 2023. However, the results of Criminal Appeal No 53 of 2018 were certified on 1st November, 2023. The appeal was successful as the sentence was reduced.



8. However, the appeal judgement was silent on when the sentence was to commence.
9. He was arrested on 24th April, 2018. He can seek to benefit from section 333 (2) of the CPC but not resentencing in the circumstances. He can also seek remission of sentence.
10. The law requires courts while sentencing do take into account the period the accused spent in custody. Section 333(2) of the Criminal Procedure Code provides:-

“(2) Subject to the provisions of Section 38 of the Penal Code, every sentence shall be deemed to commence from, and include the whole of the day of, the date on which it was pronounced, except where otherwise provided in this Code.

Provided that where the person sentenced under subsection [1] has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.’
11. The applicant was arrested on 24th April, 2018. He was sentenced on 20th September, 2018 to 20 years’ imprisonment by the trial court. On appeal the sentence was reduced upon judgment on 24th October, 2023 to 15 years’ imprisonment. In both courts, the period of the pre-trial detention was not raised or considered.
12. The applicant was in custody between 24/4/2018 upon arrest and 20/9/2018 when he was convicted and sentenced. In accordance with section 333(2) Proviso of the Criminal Procedure Code, the period of pre-trial-detention must be taken into account.

Orders

13. Accordingly, for the reasons set out above, this Court makes an order that the Applicant’s sentence of imprisonment for fifteen (15) years shall commence on 24/4/2018 in accordance with section 333(2) Proviso of the Criminal Procedure Code.
14. File closed.
Orders accordingly.

DATED AND DELIVERED THIS 3RD DAY OF APRIL 2025.

EDWARD M. MURIITHI

JUDGE

Appearances:

Mr. Mamba for DPP.

Applicant in person.

