



REPUBLIC OF KENYA



KENYA LAW
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**Akuma v Republic (Criminal Revision E457 of 2024)
[2025] KEHC 6044 (KLR) (15 May 2025) (Ruling)**

Neutral citation: [2025] KEHC 6044 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL REVISION E457 OF 2024
RN NYAKUNDI, J
MAY 15, 2025**

BETWEEN

DAVID OMARIBA AKUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before this Court is an Application dated 28th October, 2024. The Applicant moved the Court seeking the following remedies;
 1. That the Petitioner is seeking orders for a review of my sentence under Article 362 as read with 364 of *Criminal Procedure Code* and in reliance to Article 50 (2)(q) of the *COK*.
 2. That the Petitioner is seeking for orders for a reduction of his sentence on time spent on remand custody under Section 332 (2) of the *Criminal Procedure Code* Cap 75 of the laws of Kenya and the *Sentence Policy Guidelines* 2023.
 3. That the Petitioner is seeking for orders for his sentence to commence from the time he was placed in pre-trial custody on 21st July, 2019.
 4. That the Petitioner is seeking for orders to review my sentence based on sentencing principles which applied during my sentence hearing.
 5. That the Petitioner is seeking for orders to review my sentence for an individualized sentence in accordance to emerging sentence jurisprudence and objectives.
 6. That the Petitioner is praying to be present during the determination of this Petition.
2. The Application is supported and by the annexed Affidavit stating that;
 - i. That I am a Kenyan Citizen adult male sound mind hence competent to swear this Affidavit.



- ii. That I was charged with defilement c/sec 8(1) as read with Sec 8(4) of the S.O.A no. 3 of 2006, was convicted and sentenced to serve 15 years by Hon. Mogire that was delivered 12th August, 2024.
 - iii. That the Petitioner was aggrieved with the above decision but did not appeal the decision by a way of taking responsibility and has instead filed this criminal review for consideration by the court under Section 362 as read with Sec 364 of CPC and in reliance to Article 50(2)(q) of COK on the following grounds.
 - iv. That during the sentencing of the Petitioner, Hon. Mogire did order the time spent in remand custody to be factored in determining my sentence of 15 years. The committal warrant indicated that sentence to commence on date of conviction on 12th August 2024 instead of my arrest on 21st July 2019.
 - v. That the Petitioner is not disputing the constitutionality of the mandatory sentence of 15 years but wishes the court to consider a sentence reduction of my sentence on the reason that some sentencing principles such as mitigation, proportionality and fairness were not considered. The principle of mitigation when considered according to the sentencing policy guidelines 2023 recommend a reduction of the imposed sentence by one third of the prescribed sentence. In this instant its Five (5) years. The Petitioner is praying that the Court consider principles of sentencing listed above to reduce my sentence
 - vi. That I am praying to the Court to review my sentence that reflects the current sentencing jurisprudence where sexual offences are not strictly imposed to take in the circumstance of the case for individualized sentence. Reliance is placed in the authority of G.K v Rep Criminal Appeal No. 134 of 2016 (2021)KECA 232(KLR).It held that the law is no longer rigid to the minimum mandatory sentences and the court could therefore resentence him to a less severe sentence as envisaged in the constitutional right to fair hearing under Article 50(2)(p) of COK
 - vii. That what I have deponed therein is true and correct to the best of my knowledge, information and belief.
3. This Application is based under Section 333 (2) of the Criminal Procedure Code on the period of 1 year 2 months spent in pre-trial detention. This means the Applicant on arrest by the National Police Service and recommended to face trial was never released on bond under Article 149 (1) & (h) of the Constitution. This provision was articulated and interpreted in the case of Rwabugande Moses v Uganda [2017] UGSC 8 where the Supreme Court held that a sentence arrived at without taking into consideration the period spent on remand is illegal for failure with a mandatory constitutional provision. Secondly, the Supreme Court held that there has to be an arithmetic deduction of the period the Appellant spent in lawful custody in terms of Article 23(8) of the Constitution when they said;

“It is our view that the taking into account of the period spent on remand by a Court is necessarily arithmetical. This is because the period is known with certainty and precision; consideration of the remand period should therefore necessarily mean reducing or subtracting that period from the final sentence. That period spent in lawful custody prior to the trial must be specifically credited to an accused.

We must emphasize that a sentence couched in general terms that Court has taken into account the time the accused has spent on remand is ambiguous. In such circumstances, it cannot be unequivocally ascertained that the Court accounted for the remand period in arriving at the sentence. Article 23(8) of the Constitution (*supra*) makes it mandatory



and not discretionary that a sentencing Judicial Officer accounts for the remand period, as such, the remand period cannot be placed on the same scale with other factors developed under common law such as age, of the convict; fact that the convict is a first offender; remorsefulness of the convict and others which are discretionary mitigating factors which the Court can lump together. Furthermore, unlike it is with the remand period, the effect of the said other factors and the Courts determination of the sentence cannot be quantified with precision.”

4. Also in the cited case Supreme Court further reconsidered and held that;

“what is material in that decision is that the period spent in lawful custody prior to the trial and sentencing of the convict must be taken into account and according to the case of Rwabugande that remand period should be credited to a convict when he is sentenced to a term of imprisonment. This Court used the words to deduct and in an arithmetical way as a guide for the sentencing Courts but those metaphors are not derived from the Constitution.

Where the sentencing Court has clearly demonstrated that it has to be taken into account the period spent on remand to the credit of the convict, the sentence would not be interfered with by the Appellate Court only because the sentencing Judge or Justices used different words in the Judgement or missed to state that they deducted the period spent on remand. This may be issues of style for a lower Court would not be faulted when in effect the Court has complied with the constitutional obligation in Article 23(8) of the Constitution.”

5. The rationale of Criminal Justice System in Kenya rests on the legitimacy of fairness, reasonableness, equality, and conformity to the Rule of Law being part of the National principles of governance and values as stipulated in Article 10 of the Constitution. The above mentioned principles, clearly suggest that in applying Article 27 of the Constitution as read with Section 333 (2) of the CPC the Applicant has a legitimate expectation that a Court should not limit certain entitlement of rights legislated in his favor for him to benefit with a lesser sentence of giving credit to the period spent in pre-trial detention. The Applicant in this case was arrested on 22.7.2019 to face prosecution for the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the Sexual Offences Act. During the pendency of the trial, he was temporarily released on bail indicated as 9.8.2019. However, that was short-lived as the record shows the surety applied to be discharged necessitating cancelation of bond and the Applicant served in pre-trial detention for 27months That remains the only period he is entitled to a remission as credit under Section 333(2) of the C.P.C. The committal warrant to prison shall be amended accordingly.

6. It is so ordered.

GIVEN UNDER MY HAND AND THE SEAL OF THIS COURT THIS 15TH DAY OF MAY 2025.

R. NYAKUNDI

JUDGE

Representation:-

M/s Sidi for the State

