



**Mbogo v Republic (Criminal Review E239 of 2023)
[2024] KEHC 4075 (KLR) (18 April 2024) (Judgment)**

Neutral citation: [2024] KEHC 4075 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MERU
CRIMINAL REVIEW E239 OF 2023
EM MURIITHI, J
APRIL 18, 2024**

IN THE MATTER OF ENFORCEMENT OF THE BILL OF RIGHTS UNDER ARTICLE 22 (1), 25 (D), 51 (2) AND 165 (3) (A) (B) (D) (I) (II) OF THE CONSTITUTION AND IN THE MATTER OF ARTICLE 20 (1) (2) (4), 21 (1), 48, 50 (1), 258 AND 259 OF THE CONSTITUTION AND SECTION 198(3), 212 AND 333 OF THE CRIMINAL PROCEDURE CODE AND SECTION 10 MISTAKE OF FACT OF THE PENAL CODE AND IN THE MATTER OF ARTICLE 25 (C), 27 (1) (2), 47, 50 (2) (P) AND 51 (1) OF THE CONSTITUTION AND IN THE MATTER ARISING FROM HC. CRA. NO. 50 OF 2016 AT MERU HIGH COURT ORIGINATING FROM CRIMINAL CASE NO. 464 OF 2014 AT NKUBU LAW COURT

BETWEEN

JOHN GITONGA MBOGO APPLICANT

AND

REPUBLIC RESPONDENT

JUDGMENT

1. The applicant herein filed a sentence review application on 18/7/2023 seeking that, “May this application succeed totally and the imposed sentence be reduced downwards and the time spent by the applicant in custody from the date of arrest be considered and be deducted from his sentence.”
2. The request is premised on the grounds that the applicant was charged with defilement and sentenced to 40 years imprisonment, but on appeal, the sentence was reduced to 20 years. He is a first offender, regretful and remorseful over the offence committed. He is reformed and has been engaging in various rehabilitation programs. He urges the court to consider the time he spent in custody in conformity with section 333 (1) (2) of the Criminal Procedure Code, and cites *Chemagong v R* (1984) eKLR 611.
3. The respondent opposed the application vide grounds of opposition dated 19/9/2023 that, “The sentence review application is an abuse of the court process; The applicant’s appeal to this court against conviction and sentence was heard and partially succeeded with a substituted sentence of 20 years from



40 years which was meted upon by the trial court; The Applicant cannot re-litigate the same issue before a court of concurrent jurisdiction; This court has pronounced itself vide Meru Criminal Appeal Case No. 50 of 2016 on the appropriate sentence in the specific circumstances of the case; This court cannot sit on appeal over its judgment and the applicant's only recourse is to file an appeal to the Court of Appeal; In the circumstances of this case, I urge this court to dismiss the application."

Analysis and Determination

4. In allowing the applicant's appeal on sentence, the appellate court (Kiarie Waweru Kiarie J.) rendered thus,

"The complainant is a girl aged 15 years. The appellant was sentenced to 40 years imprisonment. In my view the sentence was harsh in the circumstances of this case. I will reduce it to twenty years imprisonment from the date he was sentenced by the trial court. His appeal succeeds to that extent."

5. The question is whether the appeal court finds that the appellate court complied with the provisions of Section 333(2) of the Criminal Procedure Code when it set the commencement date of the 20 years sentence to be the date of sentence by the trial court. There is no evidence in the ruling of the Court that it had considered the period of pretrial detention since the time of arrest; the court only reduced the sentence of imprisonment for 40 years, which it found "harsh in the circumstances of the case", to one of twenty years.

Orders

6. Accordingly, for the reasons set out above, the court finds that the applicant's undated application filed on 18/7/2023 has merit and an order is made directing that the term of imprisonment for twenty (20) years shall take into account the period of pre-trial detention when the applicant was remanded awaiting his trial.

7. File closed.

Order accordingly.

DATED AND DELIVERED THIS 18TH DAY OF APRIL, 2024.

EDWARD M. MURIITHI

JUDGE

Appearances

Applicant in Person

DPP for the Respondent

