



**Kirichu v Republic (Revision Case E564 of 2024)
[2024] KEHC 8396 (KLR) (Crim) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 8396 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIROBI (MILIMANI COMMERCIAL COURTS)
CRIMINAL
REVISION CASE E564 OF 2024
LN MUTENDE, J
JULY 11, 2024**

BETWEEN

MARTIN WAMBUGU KIRICHU APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Martin Wambugu Kirichu, Applicant, was charged and convicted for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*. After full trial he was convicted and sentenced to serve five (5) years imprisonment. Through an undated application filed herein on 18th February, 2024, he seeks review of the sentence and in particular consideration of the period spent in remand custody pursuant to section 333(2) of the *Criminal Procedure Code*.
2. The application is premised on the ground that the Applicant was in pre-sentence detention for a period of two (2) years and seven (7) months.
3. The Applicant swore an affidavit in support of the application where he urged the court to take into account time spent in remand custody.
4. The Respondent through Ms. Awino, did not raise any objection to the application.
5. Section 333(2) of the *Criminal Procedure Code* provides that:
 - (2) Subject to the provisions of section 38 of the *Penal Code* (Cap. 63) every sentence shall be deemed to commence from, and to 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.



6. That provision of the law applies in mandatory terms and it is the accused person's entitlement. The court is required to state that it considered the period spent in remand and it should deduct that period from the sentence meted out. This was stated in the case of *Abamad Abolfathi Mohammed & Another v Republic* [2018] eKLR where the Court of Appeal delivered itself thus:

“The second is the failure by the court to take into account in a meaningful way, the period that the appellants had spent in custody as required by section 333(2) of the *Criminal Procedure Code*. By dint of section 333(2) of the *Criminal Procedure Code*, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the *Criminal Procedure Code* was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person...”

7. In the case of *Bukenya v Uganda* (Criminal Appeal No. 17 of 2010) [2012] UGSC 3 (29 January 2013) the Court of Appeal stated that:

“Taking the remand period into account is clearly a mandatory requirement. As observed above, this Court has on many occasions construed this clause to mean in effect that the period which an accused person spends in lawful custody before completion of the trial, should be taken into account specifically along with other relevant factors before the court pronounces the term to be served. The three decisions which we have just cited are among many similar decisions of this Court in which we have emphasized the need to apply Clause (8). It does not mean that taking the remand period into account should be done mathematically such as subtracting that period from the sentence the Court would give. But it must be considered and that consideration must be noted in the judgement”

8. In this case the trial court delivered itself thus:

“... I have also considered the victim impact assesment... Have also noted his mitigation which indicates that he is remorseful. He has been in custody for long. Let him serve a sentence of 5 years imprisonment ...” (Emphasis added).

9. Under the *Sexual Offences Act* where a culprit defiles a child of 13 years like in the instant case, the minimum sentence provided is twenty (20) years imprisonment. The trial court not only pronounced itself on the question of having considered time spent in custody but exercised discretion and imposed a very lenient sentence.

10. The upshot of the above is that the application fails and is dismissed.

11. It is so ordered.



DATED, SIGNED AND DELIVERED VIRTUALLY THROUGH MICROSOFT TEAMS AT
NAIROBI, THIS 11TH DAY OF JULY, 2024.

L. N. MUTENDE

JUDGE

