



**Mwaisaka v Republic (Criminal Revision E007 of 2024)
[2024] KEHC 9561 (KLR) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9561 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E007 OF 2024
GMA DULU, J
JULY 22, 2024**

BETWEEN

ANTONY MWAKATINI MWAISAKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a request for revision of prison sentence brought to this court by the convict Antony Mwakatini Mwaisaka in Wundanyi Magistrate’s Criminal Case No. 114 of 2011 wherein he was imprisoned for twenty (20) years for defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*, No. 3 of 2006.
2. He has now come to this court urging that his prison sentence be reviewed, as the period he was in custody during trial was not factored by the trial court in the sentence imposed on him, and that as the complainant was 15 years old, he should have been sentenced to a minimum of 15 years imprisonment.
3. Learned Prosecuting Counsel Mr. Sirima for the Director of Public Prosecutions, has on his part, submitted that the period of seven (7) months and twenty one (21) days within which the convict was in custody during trial from 21st February 2011, was not taken into account by the trial court, in sentencing him, and thus the said period may be deducted from his prison sentence.
4. Having myself perused the record of the trial court, I find that the period the convict was in custody during trial, was not taken into account by the trial court in sentencing him, and that the charge sheet shows that he was arrested on 18th February 2011. As for the applicant’s contention that the sentence of 20 years imprisonment, was not the lawful minimum, in my view, it was the lawful minimum sentence under Section 8(2).
5. Thus, in accordance with the provisions of section 333(2) of the *Criminal Procedure Code* (Cap.75) therefore, I take into account the custody period during trial and order that the prison sentence



imposed on the convict Antony Mwakitini Mwaisaka will now run from 18th February 2011, when he was arrested.

DATED, SIGNED AND DELIVERED THIS 22ND DAY OF JULY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred – Court Assistant

Applicant

Mr. Sirima for State – virtual

