



**Mbugua v Republic (Miscellaneous Criminal Application  
E014 of 2022) [2023] KEHC 172 (KLR) (4 January 2023) (Ruling)**

Neutral citation: [2023] KEHC 172 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAIVASHA  
MISCELLANEOUS CRIMINAL APPLICATION E014 OF 2022**

**GL NZIOKA, J**

**JANUARY 4, 2023**

**BETWEEN**

**PAUL KIMANI MBUGUA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant herein by a chamber summons application dated February 24, 2022 is seeking for sentence review purely on the ground that, the period he spent in custody while in trial be considered in the sentence meted out.
2. The application is supported by an affidavit of even date, sworn by the applicant, in which he states that, he was charged with the offence of defilement contrary to section 8(1)(3) of the *Sexual Offences Act* No 3 of 2006 *vide* Sexual Offence case No 55 of 2020. He was tried, convicted and sentenced to serve 12 years in jail. However, the period of custody was not considered.
3. The application was not responded to despite the opportunity given to the respondent for the same. I also note rather long submissions filed by the applicant. Be that, as it were the provisions of section 333(2) of *Criminal Procedure Code* states as follows;

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.



4. In the instant matter, the trial court states as follows before sentencing the applicant

I find the actions of the accused unlawful and gross taking the age of PW2 and her gullibility into consideration. I find the accused guilty as charged for the offence of defilement contrary to section 8(1)(3) of the [Sexual Offences Act](#) and accordingly convict him under section 215 of the [Criminal Procedure Code](#).

5. It is therefore clear that, the period spent in custody was considered, what the trial court did not clarify is whether, that period should be deducted from the 12 years imposed, or is exclusive thereof. In my opinion that clarity is necessary and the benefit thereof goes to the applicant. As such, the sentence imposed shall commence from the date of arraignment in court

6. But even then, I note that, the applicant was convicted under section 8(3) of [Sexual Offences Act](#) which states;

A person who commits an offence of defilement with a child between the age of twelve and fifteen years is liable upon conviction to imprisonment for a term of not less than twenty years.

7. Pursuant thereto, the minimum sentence is 20 years and therefore I enhance the sentence to 20 years to commence from date of arraignment in court.

It is so ordered.

**Dated, delivered and signed on this 4<sup>th</sup> day of January 2023.**

**GRACE L. NZIOKA**

**JUDGE**

**In the presence of;**

Applicant present virtually

Mr. Ndiema for the state/Respondent

Ms Ogutu -Court Assistant

