



**Mwanzia v Republic (Criminal Revision E291 of 2022)
[2023] KEHC 1175 (KLR) (10 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1175 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E291 OF 2022
A. ONG'INJO, J
FEBRUARY 10, 2023**

BETWEEN

ALEX PETER MWANZIA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Alex Peter Mwanzia was convicted and sentenced to 7 years imprisonment in Taveta Magistrates Court Sexual Offence Case No 15 of 2019 sentence was passed on November 7, 2019. While sentencing the applicant the trial magistrate established that the applicant was indeed 20 years and not 17 years as he alleged. It was also established that he was not a student at the polytechnic but a professional dancer. The trial magistrate said that he was untruthful and was not remorseful on his mitigation.
2. The trial magistrate exercised her discretion & sentenced the applicant to 7 years imprisonment instead of imprisonment for a term of not less than fifteen years as provided under section 8(4) of the [Sexual Offences Act](#) No 3 of 2006.
3. The applicant has now approached this court seeking that period he was in remand be accounted for in the sentence under section 333(2) of [Criminal Procedure Code](#); He also sought that the court finds that the complainant was coerced, intimidated and threatened by locking her in police custody so as to incriminate him.
4. He also claimed that the court relied on probation report to dispute his age of 17 years at the time of arrest without any evidence.
5. The application is supported by the affidavit of the applicant filed on September 29, 2022 to the effect that he has reformed and will be productive to himself, his family and the community if his sentence is reviewed.



6. This court has considered the application, circumstances of the case and the fact that the complainant who was nearly an adult admitted that she had consensual sex with the applicant who had been her boyfriend for 2 years and find that it is inexpedient to continue inflicting punishment on the applicant who has been in incarceration from July 9, 2019 when he was arrested to-date. His sentence is reviewed to the period served which is a total of 3 years and 6 months.
7. His sentence is therefore reviewed to time served.

Dated, signed and delivered through Email,

This **10th** day of **February 2023**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:

Court assistant: Otolu

Mr. Sirima for the Respondent/state

Applicant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

