



**Chege v Republic (Miscellaneous Criminal Application
E040 of 2022) [2023] KEHC 1446 (KLR) (1 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 1446 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
MISCELLANEOUS CRIMINAL APPLICATION E040 OF 2022**

GL NZIOKA, J

MARCH 1, 2023

BETWEEN

ZACHARY KIRURI CHEGE APPLICANT

AND

REPUBLIC RESPONDENT

*(An application for review of the sentence meted out in Chief
Magistrate's Court Criminal Case No 21 of 2019 at Naivasha.)*

RULING

1. The applicant has filed the subject application herein seeking for review of the sentence of ten (10) years meted out against him vide Chief Magistrate's Court Criminal Case No 21 of 2019 at Naivasha. The application is based on the ground that the period he was in custody was not considered when the sentence was pronounced. Therefore, he seeks that the court invokes the provision of section 333 (2) of the Criminal Procedure Code and reviews the sentence.
2. He relies on the affidavit he has sworn in support of the application and reiterates that he was charged with the offence of rape contrary to section 3 of the Sexual Offences Act No 3 of 2006 and sentenced to serve ten (10) years imprisonment. That he filed an appeal at the High Court but the same has not been responded to. He further relies on the case of; Benard Mulwa Musyoka v R Criminal Appeal No 25 of 2016.
3. The application was served for a response but none was filed despite the Respondent being given fourteen (14) days for the same.
4. Be that as it may, I note from the lower court record that, the applicant was charged with the offence of rape. He was found guilty as charged vide judgement delivered on April 30, 2020 and sentenced to serve ten (10) years imprisonment.



5. The offence he is charged with is provided for under section 3 of the *Sexual Offences Act*, which stipulates that a person convicted of an offence under that section shall be liable upon conviction to imprisonment for a term of not less than ten (10) years but which shall be enhanced to imprisonment for life. It is therefore clear that the applicant was sentenced to the minimum sentence of ten (10) years and therefore no reason to interfere with the sentence.
6. As regards the period the appellant was in custody while on trial, I find that the provisions of section 333(2) of the *Criminal Procedure Code* which states 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”.
7. In the instant matter the applicant was arrested on April 4, 2019 and arraigned in court on April 8, 2019. I have gone through the lower court record and there is no indication that he was on bond during the trial. However, there is no copy of a warrant of committal on record to confirm the same. It is therefore not possible to establish whether he was in custody during the trial or not. I direct that the same established before further orders are given.

DATED, DELIVERED AND SIGNED THIS 1ST DAY OF MARCH 2023.

GRACE L. NZIOKA

JUDGE

In presence of:

Applicant present virtually (In custody).

Mr. Atika for the Respondent

Ogutu: Court Assistant

