



**Chaka v Republic (Criminal Revision E290 of 2022)
[2023] KEHC 4058 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4058 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E290 OF 2022**

GMA DULU, J

MAY 8, 2023

BETWEEN

MANGALE MUNGA CHAKA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Through a Notice of Motion filed on September 27, 2022 the applicant has come to this court under section 362 and 354 of the *Criminal Procedure Code* (cap.78) seeking revision of sentence. I note that he was imprisoned for 20 years after having been convicted for defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act*.
2. In the supporting affidavit and supplementary grounds filed with the application, the applicant has relied on section 333(2) of the *Criminal Procedure Code* and asked that the period of 2 years and 6 months during which he was in remand custody during trial, be factored in the prison sentence.
3. On his part, the learned Prosecuting Counsel Mr. Sirima in oral submissions in court, stated that the applicant had been in remand custody during trial between March 27, 2009 and September 10, 2010 – a period of 1 year, 5 months and 10 days and that the State had no objection to that period being factored in the prison sentence.
4. In oral submissions in response, the applicant stated that his leg was presently painful badly.
5. I have myself perused the trial court record. The applicant was arrested on March 27, 2009 and was sentenced on September 10, 2010 thus the Prosecution Counsel was correct in his computation of the period the applicant was in remand custody during trial.
6. Indeed, section 333(2) of the *Criminal Procedure Code* (cap.75) provides as follows:-



‘333 (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 the code. Provided that where the person sentenced under sub section (1) has, prior to such sentence been held in custody, the sentence shall take into account of the period spent in custody.’

7. I am not aware if the applicant did appeal to the High Court, but as the State does not object to the request of the applicant, I will allow the request for revision of sentence in line with the provisions of section 362 and 333(2) of the *Criminal Procedure Code* (cap.75).
8. I thus exercise this court’s revision jurisdiction under section 362 of the *Criminal Procedure Code*, and order that the prison sentence imposed on the applicant herein be and is hereby reduced by the period of one (1) year, five (5) months and ten (10) days. It is so ordered.

DATED, SIGNED AND DELIVERED THIS 8TH DAY OF MAY, 2023 AT VOI IN OPEN COURT.

GEORGE DULU

JUDGE

In the presence of: -

Applicant

Mr. Sirima for state

Mr. Otolu court assistant

