



**Katembo v Republic (Criminal Revision E253 of 2022)
[2023] KEHC 4136 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 4136 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E253 OF 2022**

**GMA DULU, J
MAY 10, 2023**

BETWEEN

JUMA KATEMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is a request by the applicant for review of sentence under Section 333(2) of the [Criminal Procedure Code](#) (Cap.75).
2. The applicant was charged in the Magistrate's court in Voi Magistrate's Criminal Case No. 773 of 2012 with defilement contrary to Section 8(1) as read with Section 8(2) of the [Sexual Offences Act](#), the particulars of which being that on 30th November, 2012 around 12:00noon within Taita Taveta County intentionally and unlawfully caused his penis to penetrate the anus of GMM a child aged 5 years..
3. He was charged on 10th December, 2012 and on the same date granted bond of Kshs. 100,000/= and surety of similar amount or cash bail of Kshs. 50,000/=.
4. He was tried and later convicted of the offence charged on 13th June, 2013 and on the 20th June, 2013 sentenced to prison term of fifteen (15) years and sentence to run immediately.
5. He appears to have appealed to High Court, but his appeal number has not been availed to me. I note however that on 15th November, 2015 Jacqueline Kamau Lady J. marked the appeal as withdrawn.
6. In his request for revision of sentence which is not dated but filed on 5th July, 2022, the applicant has said that he has been efficiently rehabilitated in prison and will not repeat such offence, and relied on Section 333(2) of the Criminal Procedure Code.



7. The learned prosecuting counsel Mr. Sirima said that the applicant was arrested on 10th December, 2012 and was in custody until judgment or sentence was on 20th June, 2013 a period of 6 months and 10 days and had no objection to the requested review of sentence.
8. The applicant on his part stated that he was now a qualified carpenter and urged the court to release him.
9. I have considered the request for revision of sentence. 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 this 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 for the period spent in custody.’
10. I am aware that there has been consistent jurisprudence in cases by Judges in the Kenyan High Court that a trial court should specifically reduce the period in custody from the prison sentence period.
11. In the present case, the trial court specifically stated that the prison sentence would run from the date of sentencing which excluded the period in custody.
12. Under Section 362 of the Criminal Procedure Code therefore I exercise this court’s powers in revision and order that the period of 6 months and 10 days was in prison be reduced from the prison term to be served by the applicant.
13. I thus allow the request and reduce the prison sentence of the applicant herein by six (6) months and ten (10) days. It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT VOI THIS 10TH DAY OF MAY, 2023.

GEORGE DULU

JUDGE

In the presence of:-

The applicant

Mr. Sirima for State

Mr. Otolo court assistant

