



**JS v Republic (Criminal Revision E037 of 2023)
[2023] KEHC 23837 (KLR) (19 October 2023) (Revision)**

Neutral citation: [2023] KEHC 23837 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KERICHO
CRIMINAL REVISION E037 OF 2023
JK SERGON, J
OCTOBER 19, 2023**

BETWEEN

JS APPLICANT

AND

REPUBLIC RESPONDENT

REVISION

1. JS, hereinafter referred to as the Applicant was convicted of the offence of Incest contrary to section 20 (1) of the Sexual Offences Act No 3 of 2006.
2. On March 14, 2018, Hon. S. M. Mokuu, the Learned Chief Magistrate sentenced the Applicant to serve 10 years imprisonment.
3. The Proceedings relating to the aforesaid case that is Kericho CMC SO Case No 67 of 2014 –Republic v JS were placed before this Court pursuant to the provisions of Section 362 and 364 of the Criminal Procedure Code.
4. The Probation Officer filed a sentence review report on July 24, 2023. In the said report it was noted that the applicant was remorseful and regretted his bad behavior and wished to be re-united with his family. The prison authorities stated that the applicant was a reformed individual and had been well behaved though he was having health challenges as he is diabetic and also has high blood pressure. The Applicant’s family stated that they held no grudge against him and were willing to receive him back home. The probation officer therefore recommended that the applicant completes the remaining term of his sentence on Community Service Order (CSO).
5. The Applicant has so far served five (5) years seven (7) months and is remaining with four (4) years three months to complete his sentence. The record shows that the Applicant is a first offender. Though the law provides a minimum sentence of ten (10) years, the Court’s discretion to mete out a lower sentence under the Constitution for a first offender. Minimum sentence were declared unconstitutional by the



Court in the case of *Philip Mueke Maiyot & 5 Others v DPP & Another* KEHC 13118 (KLR). This Court therefore has the discretion of revision to interfere with the sentence imposed herein. I think the appropriate sentence should have been eight (8) years.

6. I hereby set aside the sentence of ten (10) years and substitute it with a sentence of eight (8) years to run from the date of sentence ie, from March 14, 2018. The Applicant having served five (5) years seven (7) months now, remains with two (2) years three (3) months to complete his sentence. The Applicant Namely:- JS is hereby set free from prison and ordered to serve the remainder of the sentence ie, two (2) years three (3) months under community Service Order (CSO) at the Assistant Chief's Office, [Particulars Withheld] Sub-Location under the Supervision of Mr JL who is the Assistant Chief.

DATED, SIGNED AND DELIVERED THIS 19TH DAY OF OCTOBER, 2023.

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J.K. SERGON

JUDGE

