



**LO v DPP (Criminal Miscellaneous Application E062 of 2024)
[2024] KEHC 15280 (KLR) (3 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15280 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KAKAMEGA
CRIMINAL MISCELLANEOUS APPLICATION E062 OF 2024**

**S MBUNGI, J
DECEMBER 3, 2024**

BETWEEN

LO APPLICANT

AND

DPP RESPONDENT

RULING

1. The motion dated 26th March, 2024 filed by the applicant seeks for sentence review in accordance to the provisions of section 333(2) of the Criminal Procedure Code to take into account the period spent in custody during trial.
2. The applicant was charged with the offence of defilement contrary to section 8(1) (2) of the *Sexual Offences Act* No. 3 of 2006 and was sentenced to serve life imprisonment by the trial court.
3. He lodged a petition of appeal in Kakamega HCCRA E019 of 2021 against both conviction and sentence.
4. I have looked at the judgment delivered by the Honorable Justice Musyoka on 28.04.2023 whom in his judgment affirmed the conviction but dismissed the sentence and ordered that the matter be remitted to the trial court for re-sentencing. He further ordered that the time spent in remand shall be reckoned as required by section 333(2) of the Criminal Procedure Code.
5. In part, the judgment states:

“In the end, I am persuaded that the appeal is only partially merited. I, accordingly, shall dismiss it on conviction, but I shall interfere with the sentence. The conviction is affirmed. The sentence is hereby set aside, but the appellant shall remain in custody, to await re-sentencing by the trial court. The original trial records shall be remitted to the trial court, for re-sentencing, where the appellant shall be given a chance to mitigate. To facilitate the



re-sentencing, let the Kakamega County Director of Probation and Aftercare Services look into the antecedents of the appellant, interview the family of the victim and the community, and prepare a report, which shall be placed before the trial court for the purpose of the re-sentencing. The time spent in remand shall be reckoned, as required by section 333(2) of the Criminal Procedure Code, should the trial court decide to send the appellant to a fixed term sentence. The file in Kakamega CMCSO No. 26 of 2018 shall be mentioned before the Chief Magistrate, on a date that I shall allocate shortly. Orders accordingly.” (emphasis mine)

6. The matter was accordingly taken back to the trial court. I have perused the trial court file and proceedings. The court while meting its sentence did consider the term served by the accused person in custody and revised the sentence to an imprisonment term of 20 years.
7. In the trial court’s proceedings of 15.01.2024, paragraph 3 stated that it had considered the time served by the accused in custody before it meted the sentence of 20 years.
8. Therefore, the court cannot give to the applicant what he already has. The application lacks merit and is hereby dismissed.
9. A copy of this ruling and the trial court sentencing proceedings to be availed to the accused.
10. Let this file be closed.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 3RD DAY OF DECEMBER, 2024.

S.N MBUNGI

JUDGE

In the presence of :

Accused person – present

Court Prosecutor – Mbonzo

Court Assistant – Elizabeth Angong’a

