

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT GARISSA

CRIMINAL REVISION NO. 24 OF 2020

ADEN GULLET MOHAMED.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The Applicant was charged with the offence of attempted defilement contrary to Section 9(1) (2) of the Sexual Offences Act No. 3 of 2006.

The particulars of the offence are that on the 24th day of November 2017 in Garissa Township within Garissa County he intentionally attempted to cause his finger to enter the vagina of MMG a child aged 6 years.

2. The matter proceeded to full hearing and the applicant was convicted and sentenced to 5 years.

3. In his application before court the Applicant seeks to have his sentence revised by applying the provision of Section 333(2) of the Penal Code as he spent 2 years in custody.

4. The State objected to the application by stating that the 2 years were considered by the trial court. Secondly the sentence was minimal as the offence he was charged with attracts a 10-year-sentence.

5. Section 333(2) of the Criminal Procedure Code obligates the trial court while sentencing to consider the time the accused has spent in custody.

6. On the other hand, the Sexual Offences Act in Section 9(2) thereof places a minimum sentence for the offence of attempted defilement of a child to a term not less than 10 years.

7. The submissions by the State are correct, firstly that the trial court considered the two years in custody. Secondly the Applicant got away with a light sentence.

8. Indeed, the record is very clear that in sentencing the trial court did consider the time the applicant spent in custody.

9. For the above reasons the application must fail.

DATED, DELIVERED AND SIGNED AT GARISSA THIS 7th DAY OF OCTOBER, 2021

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ALI-ARONI

JUDGE