

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC. CRIMINAL APPLICATION NO. 36 (E36) OF 2021

DAVID SIMIYU WASWA.....APPLICANT

VERSUS

REPUBLICRESPONDENT

RULING

The Applicant, **David Simiyu Waswa** was convicted of **defilement** contrary to **Section 8(1)** as read with **Section 8 (4)** of the **Sexual Offences Act**. He was sentenced to serve fifteen (15) years imprisonment. He has applied to this court to have the period that he was in remand custody prior to his conviction taken into account. He told the court that he was in remand custody for a period of Seventeen (17) months before he was convicted. In sentencing him, the trial court did not take this period into consideration.

This court has perused the Proceedings of the trial magistrate's court. The Applicant was arraigned before the trial court on 14th March 2016. He was convicted on 3rd July 2017. He was not released on bond during the entire period of the trial of the case. In total, he was in remand custody for a period of Sixteen (16) months prior to his conviction. This period was not taken into account when the Applicant was sentenced to serve the minimum sentence prescribed by Statute.

In the premises therefore, this court formed the view that the Applicant made a case for the review of his sentence under **Section 333(2)** of the **Criminal Procedure Code**. The sentence of the Applicant is accordingly reduced by the said period of Sixteen (16) months that he was in remand custody. The Applicant shall therefore serve a term of 13 years and 8 months with effect from 3rd July 2017 when he was convicted and sentenced by the trial Magistrate's court. It is so ordered.

DATED AT KITALE THIS 7TH DAY OF OCTOBER 2021.

L. KIMARU

JUDGE