



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL DIVISION- MILIMANI COURT**

**CRIMINAL REVISION NO. E314 OF 2021**

**ISAAC JUMA.....APPLICANT**

**VERSES**

**REPUBLIC.....RESPONDENT**

**RULING**

1. Isaac Juma, the Applicant approached this court through a Notice of Motion seeking review of sentence.
2. The application is supported by an affidavit deponed by the applicant where he avers that; he was sentenced to serve ten (10) years imprisonment; the trial court did not take into consideration the period of 2 years and 7 months that he spent in custody; the sentence be reduced by 1/3; he is remorseful, a first offender and sole bread winner of his family; he is an orphan and that, his family is suffering both psychologically and financially because of the continued incarceration.
3. The Application is opposed. The State/Respondent through Ms. Chege learned counsel, urged that having been charged with the offence of defilement contrary to **Section 8(4)** of the Sexual Offences Act and was sentenced to ten (10) years imprisonment, the court took into account time spent in custody as the sentence provided for the offence is fifteen (15) years imprisonment.
4. I have considered what transpired at trial. **Section 333(2)** of the **Criminal Procedure Code** provides thus:

**“(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 subsection (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody.”**

5. In the case of **Ahamad Abolfathi Mohamed & Another Vs. Republic (2018) eKLR** the court stated that:

**“By dint of section 333(2) of the Criminal Procedure Code, the court was obliged to take into account the period that they had spent in custody before they were sentenced. Although the learned judge stated that he had taken into account the period the appellants had been in custody, he ordered that their sentence shall take effect from the date of their conviction by the trial court. With respect, there is no evidence that the court took into account the period already spent by the appellants in custody. “Taking into account” the period spent in custody must mean considering that period so that the imposed sentence is reduced proportionately by the period already spent in custody. It is not enough for the court to merely state that it has taken into account the period already spent in custody and still order the sentence to run from the date of the conviction because that amounts to ignoring altogether the period already spent in custody. It must be remembered that the proviso to section 333(2) of the Criminal Procedure**

**Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person.”**

It is a requirement for the court to consider time spent in custody.”

6. **Section 8(4)** of the Sexual Offences Act provides thus:

**1. "A person who commits an offence of defilement with a child between the age of sixteen and eighteen years is liable upon conviction to imprisonment for a term of not less than fifteen years."**

7. In meting out the sentence the trial court state as follows:

**"I have taken into account the time Accused has been in custody and the fact that he is a first offender. Accused is sentenced to ten (10) years imprisonment."**

8. It is therefore apparent that the court took into account time spent in custody.

9. With regard to the issue of reduction of sentence by 1/3, this is power bestowed up the Commissioner of Prison by Statute/Vide **Section 46** of the prison Act, Cap 90(k) and in order for a prisoner to benefit, he should be of good conduct and industrious.

10. The upshot of the above is that the application is unmeritorious. Accordingly, it is dismissed.

11. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY, THIS 7<sup>TH</sup> DAY OF OCTOBER, 2021**

**L. N. MUTENDE**

**JUDGE**

**IN THE PRESENCE OF:**

Applicant

Ms. Chege for Respondent

Court Assistant -Mutai