

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KITALE

MISC. CRIMINAL APPLICATION NO. E 153 OF 2021

RAMADHAN EKAI ERENG.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **Ramadhan Ekai Ereng**, was convicted of the offence of **attempted defilement** contrary to **Section 4** of the **Sexual Offence Act**. The Applicant was sentenced to serve ten (10) years imprisonment. He has made the present application under the provisions of **Section 333(2)** of the **Criminal Procedure Code** seeking to have the period of thirteen (13) months that he was in remand custody prior to his conviction and sentence to be taken into account. In addition, the Applicant pleaded with the court to revise his sentence and accordingly reduce the custodial period that he was sentenced to serve. The Applicant told the court that he was remorseful and regrets the decision that led him to commit the crime.

When he appeared before the court, the Applicant told the court that during the period of his incarceration, his family had suffered. He was of the view that he had been sufficiently punished for the offence that he had committed. Mr Omooria for the State was not opposed to the application. He submitted that the court may consider the Applicant's request.

The Applicant's application is in two parts. In the first part, the Applicant seeks to have the period that he was in custody prior to his conviction taken into account. This period is thirteen (13) months or one (1) year and one (1) month. Under **Section 333(2)** of the **Criminal Procedure Code**, the court is required to take into account the period that an accused was in remand custody prior to his conviction. In the present application, this court is satisfied that the Applicant has made a case for this court's appropriate intervention.

The second part of his application regards the request for reduction of sentence. In this part of the application, the Applicant, unfortunately, will not be successful. The custodial sentence that was imposed upon him by the trial Magistrate was the minimum sentence. This court cannot interfere with the exercise of sentencing discretion by the trial Magistrate. The sentence was legal. The Applicant's application in that regard cannot be allowed in the circumstances.

In the premises therefore, the Applicant made a case for this court to grant the first part of his application as result of which the Applicant shall serve a sentence of Eight (8) years and Eleven (11) months with effect from 11th October 2018. It is so ordered.

DATED AT KITALE THIS 9TH DAY OF NOVEMBER, 2021

L. KIMARU

JUDGE