



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAIROBI**

**CRIMINAL REVISION CASE NO. 279 OF 2019**

**KM.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

The applicant KM, has filed this application on 24.10.2019 seeking that his sentence be reviewed so that the period he spent in custody pending his trial be considered. That the period amounts to 1 year and 9 months. In opposing the same the counsel for the prosecution submitted that the applicant was sentenced to 10 years on 9.7.2018 for the offence of incest.

That in deciding this application, the court ought to consider the proceedings to determine if indeed the said remand period was not considered. Counsel urged that this application be dismissed so that the applicant may continue with his rehabilitation.

I have considered the submissions of the 2 rival sides. This is an Application brought under section 333(2) of the Criminal Procedure Code. Indeed this section dictates that in sentencing, the period that the accused spends in custody awaiting determination of his trial ought to be considered. Thus;

Section 333(2)

“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.”

From the record, the accused was arraigned in court in Milimani Criminal Case Number 1911/2016 on 25.11.2016, and charged with the offence of incest contrary to section 20(1) of the Sexual Offences Act, No. 3/2016. He faced an alternative charge of indecent act with a child contrary to section 11(1) of the Sexual Offences Act, No. 3/2006. Both of these offences, on conviction attract sentences of not less than 10 years' imprisonment.

The proceedings before the trial court on 9.7.2018 do not show that the period the applicant spent in custody was considered by the court during the sentencing hearing. It ought to have been considered. I accordingly therefore allow the applicants application filed herein on 24.10.2019 and order that the period he spent in custody awaiting determination of his case of 1 year, 9 months be considered and accounted for in the sentence meted out against him of 10 years' imprisonment. Orders accordingly.

**D. O. OGEMBO**

**JUDGE**

**10.7.2020**

Court:

Ruling read out in open court in presence of the applicant (Zoom) and Mr. Mutuma for the state.

**D. O. OGEMBO**

**JUDGE**

**10.7.2020**