

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MACHAKOS

MISC CRIMINAL APPLIC NO. 235 OF 2018

FELIX MUNYAO NDUNDA.....APPELLANT

VERSUS

REPUBLIC.....PROSECUTOR

RULING

1. The applicant was convicted on appeal for the offence of indecent act with a child contrary to Section 11 (1) of the Sexual Offences Act. He was sentenced by this court to 10 years imprisonment to run from the date of sentencing namely 3rd October, 2014. He has now applied to this court for review under section 333(2) of the Criminal Procedure Code Act.

2. The state conceded to the application.

3. The application was disposed of by way of written submissions and the appellant submitted that his application should be allowed and the court ought to take into consideration the time he spent in custody.

4. Mr. Cliff Machogu, prosecution Counsel, conceded to the application and cited the case of **Kyalo Muindi v R (2017) eKLR**.

5. The issue for determination is whether the court may grant the orders sought.

6. The prayer sought is governed by Section 333 (2) of the Criminal Procedure Code that states:

“(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.”

7. It is the considered opinion of the court having had due regard to Section 333 (2) of the Criminal Procedure Code that the appellant’s application is meritorious.

8. Accordingly, this court finds that the computation of ten (10) years that the appellant was sentenced to shall run from the date when the Appellant was arrested to wit 24th June, 2014.

It is so ordered.

Dated and delivered at Machakos this 17th day of October, 2019.

D. K. Kemei

Judge