



REPUBLIC OF KENYA



KENYA LAW
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**Maina v Republic (Criminal Case 1825 of 2014)
[2025] KEHC 16426 (KLR) (13 November 2025) (Ruling)**

Neutral citation: [2025] KEHC 16426 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL CASE 1825 OF 2014
TW OUYA, J
NOVEMBER 13, 2025**

BETWEEN

SAMUEL MWANGI MAINA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was tried and convicted pursuant to the provisions of Section 8(1) as read together with Section 8(4) of the *Sexual Offences Act* No.3 of 2006. Particulars were that on 10th August 2014 at [Particulars Withheld], Kigumo sub-county within Murang'a County, the Applicant intentionally cause his penis to penetrate the vagina of a minor (female) aged 16 years.
2. In convicting the Applicant, the trial Court held that the prosecution had established the case against the accused (Applicant) beyond reasonable doubt and sentenced the accused to imprisonment for a term of 10 years.
3. The Applicant approached the Court through an Appeal dated 18th July 2019 seeking the following reliefs:
 - i. That the Honourable Court be pleased to account for the time spent in remand by the Applicant being 1 year, 10 months and 25 days and discharge the Applicant forthwith and unconditionally.
 - ii. That, in the alternative, the Honourable Court be pleased to provide relief on conditional discharge through Probation sentence and/or suspended sentence and/or community service Orders (CSOs) or any other relief that it may deem fit and just to grant.
4. The subject application for revision of sentence is supported by the Applicant's written submissions dated 14th June 2025. The Applicant relied on the provisions of Section 333(2) of the Criminal



Procedure Act to anchor the argument that during sentencing the Court is enjoined to take to account the period spent in custody by the accused. Further guidance was placed in the decision of the Court in Ahmad Abolfadhi Mihammed & Another vs Republic [2018] eKLR and Bethwell Wilson Kibor vs Republic [2009] eKLR.

5. The Applicant urged the Court to exercise its supervisory jurisdiction over subordinate Courts under Article 165(6) of *the Constitution* of Kenya to hold that the trial Court failed to take to account the period of 1 year, 10 months and 25 days which the Applicant spent in custody prior to sentencing.
6. The Applicant was convicted of the offence of Defilement by the trial Court vide a Judgement delivered on 15th May 2019.
7. In his written submissions, the Applicant stated that he was arrested on 10th August 2014 and presented before Court two days later on 12th August 2014. He further averred that he was discharged on a bond Ksh. 200,000 on 26th August 2014 until 14th August 2017 when he was remanded.
8. The trial Court in its Judgment dated 15th May 2019 stated that the Applicant absconded bond leading to his arrest, cancellation of bond and the Applicant being remanded in custody as from 14th August 2017. Furthermore, the Applicant's previous Advocates on record ceased acting for him from 14th August 2017.
9. Section 333(2) of the Criminal Procedure Act provides as follows:

“

“(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.”

10. In the case of Vincent Sila Jona & 87 others v Kenya Prison Service & 2 others [2021] eKLR, the Court understood the import and meaning of Section 333(2) of the Criminal Procedure Act as follows:

“A person on whom a sentence had been imposed which did not comply with section 333(2) of the Criminal Procedure Code had recourse to the court since he would by that fact have been subjected to serve a sentence that did not comply with the law. Such a person risked serving a sentence that was in excess of the one lawfully prescribed thus being deprived of his liberty contrary to the law. Imposing a sentence without adhering to the law hence subjecting the convict to serve a sentence that was over and above what was provided for, was depriving him of his freedom without a just cause.”

11. This Court has carefully perused the decision of the trial court dated 15th May 2019 whereby, the Applicant was sentenced to imprisonment for a term of 10 years and is satisfied that the trial Court failed to take to account the period spent by the Applicant in custody prior to his conviction and sentencing.
12. The Court is alive to the fact that the accused was convicted 9th July 2019 after full trial on a different offence namely, disobeying a lawful Court Order (absconding bond), convicted and sentenced to 6 months imprisonment. In the premises, the Court holds and finds that in sentencing the accused for the offence of Defilement, trial Court ought to have accounted for the period of 1 year, 10 months and



25 days which the Applicant spent in custody prior to sentencing less 6 months which period relates to a separate conviction, namely disobeying a lawful Court Order.

13. Based on the foregoing, the Court is inclined to give the Applicant a second chance, thus, makes the following orders:

I order that the Applicant be set at liberty forthwith unless he is otherwise lawfully held.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 13TH DAY OF NOVEMBER, 2025.

HON. T. W. OUYA

JUDGE

For Appellant.....(Samuel Mwangi Maina) Present in person

For Respondent.....Mwangi P for state

Court Assistant.....Brian

