



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

REVISION NO. E008 OF 2025

JOEL WAWERU GATHONI.....

APPLICANT

-VERSUS-

REPUBLIC

RESPONDENT

RULING

1. The Applicant prays for invocation of the Provisions of **Section 333(2) of the Criminal Procedure Code** in his sentencing so that the period he was in remand custody awaiting trial is taken into account. The Application is brought *vide* a Notice of Motion dated 17th January 2025 filed herein.

2. The Prosecution Counsel (Daniel Wakasyaka) opposes the Application *vide* brief written submissions dated 6th October 2025 filed herein. He submits that this court did take into account the period the Applicant was in remand custody, while pronouncing its sentence on 9th April 2020. The court then set aside the life imprisonment sentence and substituted it for a determinate sentence of 30 (thirty years) imprisonment.
3. The Chief Magistrate's Court at Nakuru had convicted and sentenced the Applicant to life imprisonment for the offence of **Defilement contrary to section 8 (1) as read with section 8 (2) of the Sexual Offences Act No. 3 of 2006**. The victim was a 10-year old child only named as SC.
4. The Applicant entered plea of not guilty. After full trial trial he was convicted and sentenced as stated hereinabove. He lodged appeal to this court (**HCRA No. 192 of 2014**) and the conviction was upheld by my sister (Mumbua T. Matheka J). Regarding sentence, the court was guided by the Court of Appeal's decision in "**Dismas**

Wasike vs Republic” that invalidated mandatory sentences prescribed under the **Sexual Offences Act**. In the superior court’s view, the court retains discretion to determine an appropriate sentence based on particular circumstances of the case before it.

5. Before making a decision on sentence, the Honourable Judge called for a pre-sentence report from the Director of Probation and After-Care Services Nakuru. The record shows that the report was filed and the court pronounced itself on sentence on 9th April 2020, setting aside the life sentence and substituting it for a 30-years prison term as observed above. In imposing the sentence, the court considered among other mitigating factors **“section 333(2) of the Criminal Procedure Code.....”**.
6. As to whether or not **Section 333 (2) of the Criminal Procedure Code** was complied with, therefore, the issue is now moot. Interfering with a decision of a court of concurrent jurisdiction offends the well established doctrine of *stare decisis* which is frowned upon.

7. The Application is therefore dismissed as lacking in merit.

J. M. NANG'EA, JUDGE.

Ruling delivered this 20th day of January, 2026 in the presence of:

Mr Wakasyaka for the DPP.

The Applicant.

The Court Assistant (Jeniffer).

J. M. NANG'EA, JUDGE.