



REPUBLIC OF KENYA



KENYA LAW
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**Mwove v Republic (Criminal Revision 14 of 2025)
[2026] KEHC 5900 (KLR) (30 April 2026) (Ruling)**

Neutral citation: [2026] KEHC 5900 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT THIKA
CRIMINAL REVISION 14 OF 2025**

TW OUYA, J

APRIL 30, 2026

BETWEEN

DANIEL KIOKO MWOVE 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(3) of the *Sexual Offences Act* No.3 of 2006 at Ruiru Principal Magistrates court vide SO case no 2 of 2020. He was sentenced to 10 years imprisonment.
2. Particulars were that on 1st Day of January 2020 at [Particulars withheld] area in Githurai Kimbo within Kiambu County, intentionally cause his penis to penetrate the vagina of a minor (female) aged 14 years (MN). He was also charged with an alternative offence of committing an indecent Act with a child contrary to section 11(1) of the *Sexual offences Act*.
3. In convicting the Applicant, the trial Court held that the prosecution led cogent evidence that the accused person defiled the complainant and that the defence offered did not dislodge the prosecution's case.
4. The Applicant approached the Court through an Application dated 14th February 2025 seeking that the Honourable Court be pleased to account for the time spent in remand by the Applicant being 2 years, 6 months and discharge the Applicant forthwith and unconditionally, the Applicant having been arrested on 1st January 2020 and was sentenced on 29th July 2022.
5. The subject application for revision of sentence is supported by the grounds and affidavit filed on 14th February 2025.



6. The Respondent vide grounds of opposition filed by Counsel, Torosi dated 23rd June 2025, opposed the application deposing that the sentence was lenient considering that the offence for which the Applicant was convicted is a felony which attracts a sentence of life imprisonment. Counsel deposed that in the proceedings of 29th July 2022 the trial court held that: “having considered the accused person’s mitigation and the period he has been in custody he is sentenced to 10 years.” That the above is a confirmation that the time spent in custody was considered by the court.
7. The matter was canvassed through written submissions by the Applicant while the Respondent did not file any.
8. The Applicant filed written submissions on 27th 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 Mohammed & Another vs Republic [2018] eKLR and Bethwell Wilson Kibor vs Republic [2009] eKLR.
9. 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 2 years, 6 months which the Applicant spent in custody prior to sentencing.
10. 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.”
11. 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.”
12. This Court has carefully perused the decision of the trial court dated 29th July 2022 whereby, the Applicant was sentenced to imprisonment for a term of 10 years. This court has considered that the trial court expressed in writing that: “having considered the accused person’s mitigation and the period he has been in custody he is sentenced to 10 years.” This sentiment confirms that although the offence attracted a penalty of life imprisonment, a lenient sentence was passed having taken into account his mitigation and the period he had spent in custody.
13. Based on the above, I find and hold that this application is not merited and I hereby dismiss it.

DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30TH DAY APRIL, 2026



HON. T. W. OUYA

JUDGE

In the presence of:

Applicant present virtually at Kamiti Medium

Ms. Torosi for Respondent/State

Kelvin/Hamza – Court Assistant

