



**MMW v Republic (Criminal Appeal 77 of 2018)
[2025] KECA 416 (KLR) (21 February 2025) (Judgment)**

Neutral citation: [2025] KECA 416 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL 77 OF 2018
W KARANJA, LK KIMARU & AO MUCHELULE, JJA
FEBRUARY 21, 2025**

BETWEEN

MMW APPELLANT

AND

REPUBLIC RESPONDENT

(Being an appeal from the judgment of the High Court of Kenya at Nyeri (Mshila, J.) dated 22nd June 2018 in HCCRA NO. 09 OF 2017)

JUDGMENT

1. MMW, the appellant, was charged with the offence of committing an act of incest with a girl aged 7 years before the trial court following which he was found guilty, convicted and sentenced to life imprisonment. He appealed against both conviction and sentence before the High Court at Nyeri (Mshila, J.) and his appeal was partly successful. The conviction was sustained but his sentence was reduced to 20 years imprisonment from life imprisonment.
2. Not satisfied with the outcome, he filed his appeal before this Court on sentence only. In his written submissions filed before the Court dated 17th May 2024, the appellant asked the Court to interfere with the sentence and in accordance with section 332(2) of the Criminal Procedure Code consider the period that he spent in custody while on trial, before sentence, which he tabulated as one year and four months. He urged us to reduce his sentence and take into account the one year and four months he spent in custody.
3. In response to the appeal and the appellant's submissions, the State through the Principal Prosecution Counsel Miss Sakari Miriam Kibiti, stated that the learned Judge of the High Court had misinterpreted the law when she reduced the life sentence to 20 years imprisonment. The argument advanced by the State was that the minimum sentence for incest where the victim is below 18 years old is life



imprisonment, and because the victim was seven or eight years old, then the lawful sentence prescribed in law should be life imprisonment.

4. When the appeal came up for virtual hearing before us the appellant informed the Court that his appeal was only against sentence and that he was not appealing against the conviction. He relied on his written submissions and asked us to apply section 333(2) of the Criminal Procedure Code and reduce his sentence.
5. Ms. Kibiti asked us not to interfere with both appeal and sentence and urged us to dismiss the appeal in its entirety.
6. Section 333(2) of the Criminal Procedure Code 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.”

7. We note that the learned Judge did not take into account the above provision when she sentenced the appellant. This, therefore, becomes a point of law and not just an issue of severity of sentence. We have confirmed that the appellant was not released on bond throughout his trial. He is entitled to the benefit accorded by the above provision.
8. Accordingly, this appeal succeeds to the extent that the appellant be given credit for the 1 year and 4 months which he spent in custody during the entire trial before the trial Court. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 21ST DAY OF FEBRUARY 2025.

W. KARANJA

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

A.O. MUCHELULE

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JUDGE OF APPEAL

I certify that this is a the true copy of the original.

Signed

DEPUTY REGISTRAR

