



REPUBLIC OF KENYA



**KENYA LAW**  
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**Mate v Republic (Criminal Appeal 154 of 2017)  
[2023] KECA 1055 (KLR) (24 August 2023) (Judgment)**

Neutral citation: [2023] KECA 1055 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CRIMINAL APPEAL 154 OF 2017  
W KARANJA, LK KIMARU & AO MUCHELULE, JJA  
AUGUST 24, 2023**

**BETWEEN**

**JEREMIAH MUROKI MATE ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the judgment of the High Court of Kenya at Meru,  
(K.W. Kiarie, J.) dated 27th April 2017 in Criminal Appeal No. 68 of 2012)*

**JUDGMENT**

1. The appellant, Jeremiah Muroki Mate, is serving 20 years imprisonment following his conviction and sentence on August 8, 2012 for the offence of defilement contrary to section 8(1) as read with section 8 (3) of the *Sexual Offences Act*, No 3 of 2006. The particulars of the charge were that on October 22, 2012 in Igembe District within the Eastern Province he caused his male genital organ to penetrate the female genital organ of FKI a girl aged 14 years. The trial was conducted by the learned Chief Magistrate at Maua.
2. The evidence upon which the appellant was convicted was that at about 7.00 pm on October 22, 2010, the complainant, who was aged 14 years, went to the appellant's shop in the neighborhood. The appellant grabbed her and took her inside the shop, placed her on the bed, removed her inner clothes and, using his male organ, penetrated her genital organ. At some point the appellant's wife tried to intervene but the appellant repulsed her. The wife raised alarm. Many people came, including the child's parents. The appellant could not let them into the house after the child had come out. Police came and he was arrested and taken to Mutuati Police Station where the incident was formally booked, and the child taken to Mutuati Health Centre where she was attended to. Her P3 Form confirmed that she had been defiled, whereupon the appellant was charged at Maua Chief Magistrate's Court.



3. The appellant was aggrieved by this conviction and sentence, and appealed to the High Court at Meru (K. W Kiarie, J) who dismissed it in a judgment delivered on April 27, 2017.
4. This is the appellant’s second appeal. The appeal was also against conviction and sentence, but in the amended grounds the appellant indicated that he was appealing only against the sentence. He confirmed this to us during the hearing of this appeal. His only complaint was that both the trial court and the superior court had not taken into consideration, as required by section 333(2) of the Criminal Procedure Code, the period he had spent in custody while awaiting trial.
5. Ms Nandwa, learned counsel for the state, conceded that indeed the sentence imposed had not taken into consideration the period the appellant had been remanded in custody. It is not in dispute that the appellant had remained in remand custody for 22 months, after failing to meet the bond terms that the trial court had set.
6. Section 333(2) of the Criminal Procedure Code provides as follows:-

“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 reiterate what this court stated in Abamad Abolfatbi Mobamed & another v Republic [2018]eKLR as follows:-

“It must be remembered that the proviso to section 333(2) of the Criminal Procedure Code was introduced in 2007 to give the court power to include the period already spent in custody in the sentence that it metes out to the accused person. We find that the first appellate court misdirected itself in that respect and should have directed the appellants’ sentence of imprisonment to run from the date of their arrest on June 19, 2012.”
8. In the Judiciary Sentencing Policy Guidelines, it is provided as follows:-

“The proviso to section 333(2) of the Criminal Procedure Code obligates the court to take into account the time already served in custody if the convicted person had been in custody during the trial. Failure to do so impacts on the overall period of detention which may result in an excessive punishment that is not proportional to the offence committed. In determining the period of imprisonment that should be served by an offender, the court must take into account the period in which the offender was held in custody during the trial.”
9. We observe that these guidelines have documented the jurisprudence that has been developed by this court following the 2007 amendment to the Criminal Procedure Code in relation to determining the amount of sentence where an accused has remained in custody during trial. The result was that the sentence meted out was manifestly excessive and disproportionate, thereby calling for our intervention.
10. In the circumstances, we allow the appeal to the extent that the appellant’s sentence of 20 years shall run from October 22, 2010 when he was arrested.

**DATED AND DELIVERED AT NYERI THIS 24<sup>TH</sup> DAY OF AUGUST 2023**

**W. KARANJA**



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**JUDGE OF APPEAL**

**L. KIMARU**

.....  
**JUDGE OF APPEAL**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**

