



REPUBLIC OF KENYA



KENYA LAW
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**Ruhiu v Republic (Criminal Appeal 114 of 2017)
[2023] KECA 1606 (KLR) (22 September 2023) (Judgment)**

Neutral citation: [2023] KECA 1606 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CRIMINAL APPEAL 114 OF 2017
W KARANJA, J MOHAMMED & LK KIMARU, JJA
SEPTEMBER 22, 2023**

BETWEEN

AMOS KAGWAMBA RUHIU APPELLANT

AND

REPUBLIC RESPONDENT

*(Being an appeal against the judgment of the High Court of Kenya at
Nyeri (Cherere, J.) dated 26th July, 2017 in HCCA No. 188 of 2012)*

JUDGMENT

1. The appellant, Amos Kagwamba Ruhiu, was charged with defilement contrary to Section 8 (2) of the [Sexual Offences Act](#). The particulars of the offence were that on 12th September, 2011 at Nyeri District (now County), the appellant intentionally and unlawfully caused his penis to penetrate the vagina of S. N. a girl aged nine (9) years. When the appellant was arraigned before the trial Magistrate's Court, he pleaded not guilty to the charge. After a full trial, he was convicted as charged. He was sentenced to serve twenty (20) years imprisonment. His appeal to the High Court on both conviction and sentence was dismissed.
2. The appellant filed a second appeal to this Court. Although in his memorandum of appeal he challenged the dismissal of his appeal by the High Court both on conviction and sentence, during the hearing of the appeal, the appellant, who was acting in person, informed the Court that he was abandoning his appeal against conviction. Instead, the appellant urged the Court to only take into consideration the period that he was in remand custody prior to his conviction when determining the custodial sentence that he should serve. Mr. Naulikha for the State was not opposed to the appellant's request for the review of his custodial sentence on the proposed terms.
3. The appellant has abandoned his appeal against conviction. This Court therefore confirms the conviction of the appellant by the trial Magistrate's Court which was upheld, on appeal, by the High



Court. There is only one issue left for determination by this Court; whether the appellant’s custodial sentence should be reduced to the extent of the period that he was in remand custody prior to his conviction. Section 333 (2) of the Criminal Procedure Code provides thus:

“Subject to the provisions Section 38 of the Penal Code every sentence shall be deemed to commence from, and to include the whole of the day of, the date which it was pronounced, except where otherwise provided by the Code.

Provided that where the person sentenced under sub-section (1) has, prior to such sentence, been held in custody, the sentence shall take account of the period spent in custody”.

4. Our perusal of the trial Magistrate’s Court’s proceedings indicates that although the appellant was released on a bond of Kshs.200,000/= with one surety of a similar amount at the time plea was taken on 14th October, 2011, he was not able to raise the bond. He was therefore in remand custody for the period of one (1) year and one (1) week before he was convicted and sentenced to the custodial sentence that he is now serving.
5. We, therefore, agree with the appellant that this period should have been taken into account when he was initially sentenced. The appellant’s appeal on sentence is allowed to the extent that the custodial sentence of twenty (20) years imprisonment shall commence from 14th October, 2011 when he was remanded in custody and not the 19th October, 2012 when he was convicted by the trial court.
6. It is so ordered.

DATED AND DELIVERED AT NYERI THIS 22ND DAY OF SEPTEMBER, 2023.

W. KARANJA

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JUDGE OF APPEAL

JAMILA MOHAMMED

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JUDGE OF APPEAL

L. KIMARU

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JUDGE OF APPEAL

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

DEPUTY REGISTRAR

