



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wario v Republic (Criminal Appeal E032 of 2023)  
[2024] KEHC 3043 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3043 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MARSABIT  
CRIMINAL APPEAL E032 OF 2023  
JN NJAGI, J  
MARCH 20, 2024**

**BETWEEN**

**WAKO JATTAN WARIO ..... APPELLANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Being an appeal from the original conviction and sentence by Willy K. Cheruiyot, PM, in Moyale P.M's Court Criminal MSCO Case No.E002 of 2023 delivered on 28/11/2023)*

**RULING**

1. The appellant was convicted for the offence of defilement and was sentenced to serve 10 years imprisonment. He has now filed amended grounds of appeal stating that the trial court in sentencing him did not take note of the period spent in custody awaiting trial contrary to the provisions so section 333(2) of the *Criminal Procedure Code*. The applicant in support of his application relied on the cases of *Abanah Abol Fathi Mohamed & another -v- Republic* (2018) eKLR & *Bethwel Wilson Kibor -v- Republic* (2009)eKLR.
2. I have perused the record of the trial court. During sentencing the trial magistrate only stated that he had considered the provisions of section 8(3) of the *Sexual Offences Act* under which the applicant was charged. He stated that the offence of defilement was committed against a child aged 15 years. The magistrate then sentenced the applicant to a sentence of 10 years imprisonment. The magistrate did not state that he had considered the period spent in custody awaiting trial.
3. The applicant was sentenced on 21.11.23. He was arraigned in court on the 9<sup>th</sup> January, 2023. He was in custody throughout the trial. This was a period of about 10 months. Section 333(2) of the *Criminal Procedure Code* behoves a court before sentencing an accused person who has been in custody during the trial to take into account the period spent in custody when sentencing the accused. The trial court in this case did not comply with the provisions of the section. The applicant was thus prejudiced by



the sentence. It is the duty of this court to correct any mistake done by the trial court. I accordingly order that the sentence of 10 years imprisonment be served commencing from the date the applicant took plea, that is on January 9, 2023.

It is so ordered.

**DELIVERED, DATED AND SIGNED AT MARSABIT THIS 20<sup>TH</sup> DAY OF MARCH, 2024.**

**J.N. NJAGI**

**JUDGE**

In the presence of:

Mr. Ngigi for Respondent

Applicant – Appearing in person

Court Assistant Jarso

14 days Right of Appeal

