



REPUBLIC OF KENYA



KENYA LAW
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**Musewe v Republic (Criminal Petition 35 of 2023)
[2024] KEHC 4651 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4651 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL PETITION 35 OF 2023
DO OGEMBO, J
APRIL 29, 2024**

BETWEEN

STEPHEN MUSEWE APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in the High Court at Siaya in Criminal Case No. 29 of 2016 delivered on 5/10/2022 by Hon. Justice R.E. Aburili - Judge)

RULING

1. Stephen Musewe, the Applicant, has filed a Notice of Motion Application before this court, dated 26/6/2023. On its heading, the Application is brought under multiple provisions of *the Constitution* and Section 216,329 and 333(2) of the *Criminal Procedure Code*. The Application prays for revision of the sentence of the Applicant. It is supported by an Affidavit of the Applicant in which it has been deponed that the Applicant had been charged, convicted and sentenced to serve 20 years imprisonment for the offence of Defilement contrary to Section 8 (3) of the *Sexual Offences Act*. That this was in Ukwala PM's Court, Criminal No. 365 of 2014.
2. That he filed an Appeal at the High Court, being HCCR Appeal No. 29 of 2016, which appeal was dismissed by the court on 19/11/2018. In the same Affidavit, the Applicant has raised several factors of mitigation, particularly that he was reformed and that the period of 1 year and 4 months he remained in remand custody be accounted for in the sentence. He has also filed submissions highlighting on the same.
3. The prosecution did not make any substantive response to the application of the applicant.
4. I have considered this application, and the Affidavit and Submissions filed by the Applicant. I have also considered the record of proceedings regarding the case of the Applicant. It is clear from the proceedings of both the trial court that the applicant was handed out the minimum mandatory



sentence of 20 years imprisonment. And it is, the same sentence that was confirmed by the High Court on appeal.

5. However, neither the trial court nor the High court gave any directions on when the sentence of the Applicant would commence. Section 333 (2) of the *Criminal Procedure Code* declares that such period spent by the Applicant in remand custody ought to be accounted for in the sentence.
6. It is on this basis that I find merit in this application for revision. I accordingly order that the Applicant serves 20 years imprisonment as sentenced by the trial court, and confirmed on appeal by the High Court. The sentence of the Applicant shall run from 30/6/2014, the date of arrest of the Applicant. Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 29TH DAY OF APRIL, 2024.

D.O. OGEMBO

JUDGE

~~29/4/2024~~

Court

RULING READ OUT IN OPEN COURT IN PRESENCE OF THE APPLICANT, (KISUMU MAXIMUM) AND MS. MUMU FOR STATE.

D.O. OGEMBO

JUDGE

~~29/4/2024~~

