



**Mwenje v Republic (Criminal Revision E041 of 2021)
[2024] KEHC 6371 (KLR) (31 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
CRIMINAL REVISION E041 OF 2021**

A MSHILA, J

MAY 31, 2024

BETWEEN

ALFRED MOHAMMED MWENJE APPLICANT

AND

REPUBLIC RESPONDENT

(Being Review of Sentencing in Kiambu CMCCR. No.21 of 2017)

RULING

1. A brief outline of the case was that the Applicant was charged with defilement C/S 8(1) (3) of the [Sexual Offences Act](#) No.3 of 2006.
2. The particulars of the offence are that on the 3rd day of April, 2017 at (Particulars withheld) Village in (Particulars withheld) within Nairobi County the Applicant intentionally caused penetration into the anus of PN a child aged 16 years.
3. The Applicant's alternate charge was C/S 11(1) of the [Sexual Offences Act](#); the particulars of the offence are that on the 3rd day of April, 2017 at (Particulars withheld) Village in (Particulars withheld) within Nairobi County the Applicant intentionally touched the anus of PN a child aged 16 years.
4. The Applicant was found guilty and was convicted and sentenced to serve a term of Fifteen (15) years imprisonment; Being aggrieved by the conviction and sentence, the Appellant filed the instant Petition of Appeal that is HCRA No. E041 of 2021; the Applicant chose to abandon the Appeal on conviction and sentence and instead opted to pursue a revision of his sentence as provided for under Section 333(2) of the [Criminal Procedure Code](#).
5. At the hearing hereof the Applicant was unrepresented whereas the Respondent was represented by Prosecuting Counsel Mr Gacharia; both parties made oral submissions; hereunder are the parties respective submissions.



Applicant's Case

6. The application is for review of sentence under the provisions of Section 333(2) of the Criminal Procedure Code; that this court be pleased to apply the aforesaid section and to backdate the commencement date of the sentence to commence from the date of his arrest which was on 3rd April, 2017. He submitted that he was remanded in custody throughout the pendency of the hearing to the determination of his case as he was unable to raise the cash bail.

Respondent's Case

7. Counsel for the Respondent in response stated that the State was not opposed to the application and that the date of arrest be taken into consideration as the commencement date for the sentence.

Issues For Determination

8. After hearing the rival submissions this court has framed only one issue for determination which is whether the trial court erred in failing to consider the date of arrest as the commencement date of the sentence;

Analysis

Whether to consider the date of arrest as the commencement date of the sentence;

9. Upon perusal of the court record this court notes that the Applicant had been charged in CMC No.21 of 2017 with defilement C/S 8(1)(3) of the Sexual Offences Act No.3 of 2006 and was convicted and sentenced on the 14th June, 2017; being aggrieved with the trial court's decision the Applicant preferred this instant appeal in the High Court;
10. The trial court record reflects that the Applicant was on 7/04/2017 granted a Bond in the sum of Kshs.200,000/- or cash bail of Kshs.100,000/-; the Applicant it appears was unable raise either and was therefore remanded throughout the pendency of the trial.
11. The trial court convicted the Applicant on his own plea of guilty and on the 14/06/2017 passed sentence of fifteen (15) years on the main charge.
12. On the 16/11/2023 the Applicant made an oral application to withdraw his appeal and sought for the review of his sentence and requested that the provisions of Section 333(2) be invoked and prayed for an order that the sentence imposed do commence from the date of arrest.
13. The provisions of Section 333(2) of the Criminal Procedure Code reads 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 of which it was pronounced, except Where otherwise it is 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”.
14. The trial courts record speaks for itself and upon careful perusal it is apparent that the trial court did not take into consideration the duration the Applicant spent in remand.



15. The Applicant was arrested on 3/04/2017 and was sentenced on 14/06/2017; The period translates to a period of approximately three (3) months;
16. In the light of the above this court is satisfied that the Applicant is deserving of the benefit of the provisions of Section 333(2) of the Criminal Procedure Code; the period of three (3) months spent in remand from the date he was arrested to the date of the sentencing be discounted from the term of fifteen (15) years.

Findings and Determination

17. For the foregoing reasons this court makes the following findings and determinations;
 - i. This court finds that the application has merit and is hereby allowed;
 - ii. The sentence shall commence from the date of arrest which is stated on the Charge Sheet as being 3/04/2017;
 - iii. Period of three (3) months be discounted.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA TEAMS AT KIAMBU THIS 31ST DAY OF MAY, 2024.

A. MSHILA

JUDGE

In the presence of;

Mourice – Court Assistant

Applicant – No appearance

No appearance by Gacharia for the State

