



REPUBLIC OF KENYA



**Simiyu v Republic (Criminal Application E094 of 2024)  
[2024] KEHC 10215 (KLR) (15 August 2024) (Ruling)**

Neutral citation: [2024] KEHC 10215 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
CRIMINAL APPLICATION E094 OF 2024  
RE ABURILI, J  
AUGUST 15, 2024**

**BETWEEN**

**DISHON WAFULA SIMIYU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in Maseno SPM SO Case  
No. E017 of 2020 on 26th September, 2023 by Hon. C.L.Yalwala, SPM)*

**RULING**

1. The applicant is a convict of the offence of defilement under section 8(4) of the [Sexual Offences Act](#). He was sentenced to serve ten years in prison. He applies for leave to appeal out of time. In his application, he states that the only reason he wishes to appeal is to mitigate and to seek for consideration of section 333(2) of the [Criminal Procedure Code](#) for the period spent in custody to be taken into account.
2. I have considered the application and the grounds in support. I do not find any merit in the intended appeal as the convict does not say that he was not allowed to mitigate. The sentence imposed was lawful. Section 333(2) of the [Criminal Procedure Code](#) cannot be a reason for an appeal as it can be considered even by way of an application as long as the convict files into court proceedings of the lower court to demonstrate that they were not on bond during the trial.
3. I find the application not merited. It is hereby dismissed
4. Signal to issue.
5. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 15<sup>TH</sup> DAY OF AUGUST, 2024**

**R.E. ABURILI**



**JUDGE**

