



**Abdi v Republic (Miscellaneous Criminal Application E019 of 2024)  
[2024] KEHC 11525 (KLR) (30 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11525 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E019 OF 2024  
JN ONYIEGO, J  
SEPTEMBER 30, 2024**

**BETWEEN**

**ABDI SIGAT ABDI ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant was charged with the offence of defilement contrary to Section 8 (1) as read together with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006.
2. The particulars of this offence were that on diverse dates between 1<sup>st</sup> May to 29<sup>th</sup> May, 2020 in Dadaab Sub-County within Garissa County, he unlawfully caused his genital organ namely penis to penetrate the genital organ namely vagina of ZMH, a child aged 16 years.
3. In the alternative, the applicant was charged with committing an indecent act with a child contrary to Section 11 (1) of the *Sexual Offences Act* No. 3 of 2006. The particulars of this count were that, on diverse dates between 1<sup>st</sup> May, 2020 to 29<sup>th</sup> May, 2020 in Dadaab Sub-County within Dadaab County, he willfully and intentionally touched the genital organ namely vagina of NMH, a child aged 16 years with his genitals namely penis.
4. The applicant was convicted on the main charge and sentenced to serve fifteen (15) years imprisonment.
5. Aggrieved by the said conviction and sentence, he moved to this court vide Criminal Appeal No. E053 of 2022 challenging both conviction and sentence.
6. Through its judgment dated 17<sup>th</sup> May, 2024, Riechi J, dismissed the appeal in its entirety thus upholding both the conviction and sentence.



7. Undeterred, he came to this court once again vide what is referred to as the humble mitigation which is undated seeking court's leniency on grounds that; he is suffering from epilepsy; he is a child to a single parent who is jobless; he has reformed having acquired carpentry skills which he needs to utilize at home and therefore should be set free or be given a non-custodial sentence.
8. During the hearing, he reiterated the content of his application. In response, prosecution opposed the application calling it an abuse of the court process as the court is functus officio.
9. I have considered the application herein and the objection thereof. There is no doubt that the applicant was convicted and sentenced to serve 15 years imprisonment. There is no doubt also that he appealed against the said conviction and sentence before this court and the same was dismissed.
10. According to Riechi J, the sentence imposed was commensurate and appropriate to the offence charged.
11. For the applicant to seek review of the same sentence it amounts to this court sitting on its own judgement on an appellate capacity. This court is therefore functus officio. Accordingly, I have no jurisdiction to hear this application. To that extent, the application is dismissed.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF SEPTEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

