



**Muhoya v Republic (Criminal Miscellaneous Application E038 of 2024)
[2024] KEHC 11775 (KLR) (27 September 2024) (Ruling)**

Neutral citation: [2024] KEHC 11775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
CRIMINAL MISCELLANEOUS APPLICATION E038 OF 2024
RE ABURILI, J
SEPTEMBER 27, 2024**

BETWEEN

ALPHONCE ONYANGO MUHOYA APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for review of Conviction and Sentences in Siaya PM's Court vide Criminal Case No. 829 of 2011 delivered by Hon. R. B. Ngetich, Chief Magistrate, dated 28.3.2013)

RULING

1. The Applicant is Alphonce Onyango Muhoya. He was convicted of the offence of defilement contrary to Section 8 (1) as read with Section 8 (2) of the [Sexual Offences Act](#) and sentenced to serve life imprisonment on 28/3/2013 vide Siaya SPM (Sexual Offence) Case No. 829/2011.
2. From the court records available, and which courts were retrieved from the archives at Kisumu, the complainant was aged 11 years when he was sodomized.
3. He now applies that this court takes into account the period of one year and five months that he served in remand custody upon arrest on 13/10/2011 to 29/3/2013 when he was sentenced.
4. From the trial court record retrieved, the applicant convict herein was sentenced to serve life imprisonment. He deposes that the life imprisonment was reduced to 20 years imprisonment vide Kisumu HCCRA 39/2013.
5. That aside, the mandatory sentence is life imprisonment. As the convict only benefited from sentence reduction on appeal, he had the opportunity to urge the court on appeal to consider the period spent in custody.
6. I decline to interfere with the already reduced sentence which the convict was lucky to have benefited from the discretion of the court on appeal.



7. I find this application not merited. It is dismissed.

8. This file is closed. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 27TH DAY OF SEPTEMBER, 2024

R. E. ABURILI

JUDGE

