



**Odwa v Republic (Miscellaneous Criminal Application  
E095 of 2022) [2023] KEHC 3090 (KLR) (28 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 3090 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E095 OF 2022**

**RE ABURILI, J  
MARCH 28, 2023**

**BETWEEN**

**JUSTUS OKORE ODWA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The applicant Justus Okore Odwa was convicted and sentenced to serve life imprisonment for the offence of defilement contrary to section 8(1)(2) of the *Sexual Offences Act* as per his application herein and he claims that his appeal to the High Court from the Chief Magistrate's Court Kisumu in sexual offences case No 74 of 2008 was dismissed vide HCCRA No 54 of 2009.
2. He now wants this court to apply section 333(2) of the *Criminal Procedure Code* on the period spent in custody.
3. Regrettably, as the life sentence is not a term sentence, the period spent in custody during the trial is immaterial. This application is found to be devoid of merit and is hereby dismissed as this court cannot substitute sentence lawfully imposed on the basis of an application under section 333(2) or article 165(3)(b) of the *Constitution*. The application is dismissed. File closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF MARCH, 2023**

**R. E. ABURILI**

**JUDGE**

