



**Chitibwa v Republic (Miscellaneous Criminal Application
E138 of 2022) [2023] KEHC 2956 (KLR) (24 March 2023) (Ruling)**

Neutral citation: [2023] KEHC 2956 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E138 OF 2022**

**A. ONG'INJO, J
MARCH 24, 2023**

BETWEEN

CHITIBWA JAGI CHITIBWA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Chilibwa Jagi Chitibwa was charged with the offence of defilement contrary to section 8(1) as read with Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 in Mariakani SPMs Court CR. Case No. 292 of 2015 and was convicted and sentenced to serve 25 years imprisonment on 2nd November 2015 due to seriousness of the offence and impact the offence was bound to have on the Complainant.
2. The applicant was arraigned in court on June 11, 2015 and was granted bond of Kshs.100,000 with surety of similar amount but he didn't secure his release on bond until the trial was concluded.
3. The applicant appealed in High Court at Mombasa in CR. A. No. 195 of 2015 where the appeal was dismissed and conviction and sentence of 25 years upheld.
4. The Applicant now seeks that his sentence be reviewed in consideration he was a 1st offender and that the period he spent in custody should be factored in his sentence. He urged that court takes into account life expectancy and review his sentence.
5. This court has considered the application and orders that the sentence of 25 years is reduced to 15 years and start from June 11, 2015 when he was 1st arraigned in court. The trial court considered the accused person's mitigation and seriousness of the offence before sentencing the applicant and passed sentence of 25 years.
6. Section 8(3) of the *Sexual Offences Act* No. 3 of 2006 provides that a person who commits an offence of defilement with a child between the age of 12 and 15 years is liable upon conviction to imprisonment



for a term of not less than 20 years.No reason was given for enhancing the sentence beyond the stipulated 20 years. The sentence is reviewed to 15 years in consideration of principle in Muruatetu and Philip Mueke petitions in the Supreme Court and High Court at Machakos.

7. The sentence to run from date applicant arraigned in court June 15, 2015.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 24TH DAY OF MARCH 2023

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of:-

Ogwel- Court Assistant

Accused – Present in person

Mr. Ngiri – Counsel for State

HON. LADY JUSTICE A. ONG'INJO

JUDGE

