



**Kiria v Republic (Miscellaneous Criminal Application
E236 of 2022) [2023] KEHC 19304 (KLR) (29 June 2023) (Order)**

Neutral citation: [2023] KEHC 19304 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E236 OF 2022**

**A. ONG'INJO, J
JUNE 29, 2023**

BETWEEN

STANLEY MUCOKA KIRIA APPLICANT

AND

REPUBLIC RESPONDENT

ORDER

29/06/2023

Before Hon. Lady Justice A. Ong'injo J

Ogwel – Court Asst.

Mr. Ngiri – Court Prosecutor

1. Applicant was charged with the offence of defilement of 13 years old girl on diverse dates between November 6, 2016 and December 23, 2016 at Tiwi location Kwale county. He was convicted and sentenced to serve 20 years imprisonment on August 31, 2017.
2. The applicants appeal on conviction was dismissed for lacking merit in CR A. No 21 of 2018.
3. The applicant now applies that the court reviews his sentence in consideration of his mitigation and in line with the decisions in the authorities he has cited.
4. This court has considered the application and noted that the applicant was sentenced to serve 20 years jail term which is the maximum under section 8(3) of *Act* No 3 of 2006 without indicating whether discretion was exercised. This court finds that it is a duty of any trial court to indicate extent to which discretion has been exercised.



5. From the evidence on record if it was not that the complainants father saw the applicant run away from the home the complainant would not have disclosed that she had a consensual relationship with the applicant. The applicant cannot therefore be faulted wholly.
6. This court is minded of the appropriate sentence in similar cases and find that time served by applicant since he was remanded in custody during trial on January 1, 2021 to date June 29, 2023, a total of 12 years is sufficient punishment and it would be inexpedient to incarcerate him any further. He should be released forthwith unless lawfully detained.

DATED, SIGNED AND DELIVERED IN OPEN COURT THIS 29TH DAY OF JUNE 2023.

HON. LADY JUSTICE A. ONG'INJO

JUDGE

