



REPUBLIC OF KENYA



**Odhiambo v Republic (Miscellaneous Criminal Application
E118 of 2022) [2022] KEHC 13147 (KLR) (23 September 2022) (Ruling)**

Neutral citation: [2022] KEHC 13147 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E118 OF 2022
RE ABURILI, J
SEPTEMBER 23, 2022**

BETWEEN

GILBERT GEORGE ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application arising from Judgment, conviction and sentence IN Siaya PM's court Sexual Offence Case No. 26 of 2017 delivered on 18/9/2018 by Hon. T.M. Olando, Senior Resident Magistrate AND Siaya High Court Criminal Appeal No. 54/2018)

RULING

1. The applicant Gilbert George Odhiambo was convicted of the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual offences Act* vide Siaya PM SO No 26/2017 by Hon T M Olando, Senior Resident Magistrate. He was sentenced to serve 20 years imprisonment. The child victim was aged 10 years old.
2. He appealed to this court vide HCRA 54/2018 which appeal was dismissed both against conviction and sentence. He is now before this court seeking reconsideration of sentence taking into accounts the period he spent in custody.
3. I observe that the applicant was sentenced to a very lenient sentence of 20 years imprisonment yet the mandatory minimum is life imprisonment under section 8(2) of the *Sexual Offences Act*.
4. Nonetheless, he was not on bond during trial hence the court should have considered that period in sentencing him, however lenient the sentence was as it was in exercise of judicial discretion; which sentence this court upheld.
5. In the premises, I allow the application and order that the 20 years imprisonment shall take into account the period the applicant/convict spent in custody from the date of his arrest on September 16,



2017, according to the charge sheet dated September 22, 2017, until he was sentenced on September 25, 2018.

6. File closed. I so order.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 23RD DAY OF SEPTEMBER, 2022

R.E. ABURILI

JUDGE

