



**Muombe v Republic (Miscellaneous Criminal Application E013 of 2021)  
[2022] KEHC 18091 (KLR) (16 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 18091 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS CRIMINAL APPLICATION E013 OF 2021  
REA OUGO, J  
DECEMBER 16, 2022**

**BETWEEN**

**ELIAKIM KHISA MUOMBE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Appeal from Justice Bwonong'a in a judgment dated April 27, 2022)*

**RULING**

1. The Petitioner Eliakim Khisa Muombe in his petition of appeal filed in court on the January 9, 2021 seeks leniency and reduction of the sentence. He was convicted and sentenced to serve 20 years imprisonment for the offence of defilement contrary to Section 8 (1) as read with Section (2) of the *Sexual Offences Act* No 3of 2006.
2. At the hearing the Petitioner admitted that he was jailed to 20 years. He adds that he has been very sickly and that his sentence should be reduced. He also asked the court to consider that he left his home in 2019.
3. Whilst opposing the appeal Ms Omondi for the state Respondent submitted that the appellant was convicted of the offence of defilement and sentenced to 20 years. That thereafter he appealed and his appeal was heard and dismissed on the April 27, 2022. That in the judgment his sentence was considered and the appellant/applicant is again asking this court to review the sentence. That what the petitioner is seeking is for the court to sit on appeal on a decision of a court of similar jurisdiction and that the application should be dismissed.
4. Though the petitioner has filed the appeal in the form of a Petition he is seeking a review of the sentence that was considered by a court of equal jurisdiction. This petition is totally without merit. This court is court of equal jurisdiction as that which heard this appeal. Justice Bwonong'a in a judgment dated April 27, 2022 stated that he did not have the discretion to interfere with sentencing discretion of the



trial court and that the sentence imposed is authorised by law. The only avenue left to the petitioner is to file an appeal in the Court of Appeal.

5. I therefore find no merit in the petition and I dismiss it. File is closed.

**DATED, SIGNED, AND DELIVERED AT BUNGOMA VIA MICROSOFT TEAMS THIS 16<sup>TH</sup>  
DAY OF DECEMBER, 2022**

**R.E. OUGO**

**JUDGE**

**In the presence of:**

Ms Omondi – State Counsel

Ms Wilkister – Court Assistant.

Applicant : Eliakim Khisa Muombe – present online.

