



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT ELDORET**

**HIGH COURT CRIMINAL MISCELLANEOUS APPLICATION NO 49 OF 2020**

**SAMWEL OTIMBA ESHIWANI .....APPLICANT**

**VERSUS**

**REPUBLIC .....RESPONDENT**

**RULING**

1. The applicant (**SAMWEL OTIMBA ESHIWANI**) was convicted in the Chief Magistrate's court at Eldoret, for the offence of defilement of a child contrary to **section 8(1) as read with section 8 (3) of the Sexual Offences Act**, and sentenced to serve 20 years imprisonment. His appeal on conviction and sentence to the High Court at Eldoret was heard and dismissed on 19<sup>th</sup> November, 2011. He subsequently appealed to the Court of Appeal in Cr Appeal No 7 of 2012, and upon hearing, the appeal was dismissed on 11<sup>th</sup> April 2014.

2. He has now filed an application under certificate of urgency through the aid of a prison officer at the Kitale GK Prison where he is serving sentence. By a letter dated 2<sup>nd</sup> June 2020, signed by **SSP Simon K. Baraiywo**, a plea has been made to this court to intervene, purely on humanitarian grounds as he is unlikely to survive his sentence. The letter reads in part as follows:

**“... At the time of conviction he was 69 years old. He has served 11 years as from the date of conviction and sentencing, he was 69 years old. He has served 11 years from the date of conviction, and he is now 81 years old. No rehabilitation process is taking place on him because of old age and poor health, renal diseases, presenting with, progressive memory loss, generalized motor weakness, and disorganized speech (neurodevelopmental disorder/dementia). He is being assisted on everything by other inmates...”**

3. He draws this court's attention to the medical report dated 17/04/2020 by the Senior Medical Officer of Kitale County Hospital **Dr. DENNIS NANYINYI** which indicates that upon examining the inmate he was found to have the following conditions

**a. Dilated cardiomyopathy**

**b. Biventricular systolic dysfunction**

**c. Enlarged prostate**

4. The inmate has exhausted all avenues of redress and is now seeking mercy to have his sentence reviewed. The Officer in Charge of Kitale Prison has been prompted by the provisions of **Rule 27 (2) of the Prisons Act Cap 90** which states that:

**The medical officer shall advise the officer in charge as to any prisoner who should be released by reason of his health being likely to be endangered by his remaining in prison, or his being unlikely to survive his sentence, or is permanently unfit for prison discipline.**

5. I take into account the fact that the inmate has served more than half the sentence. He is advanced in years and is in very poor health. Being held at the prison is no longer serving any useful purpose as he is now not subjected to any rehabilitation and is a burden to the prison authorities as well as other inmates. I find that in the circumstances he is suitable for revision of sentence which I hereby do revise by reducing the sentence to the period already served. He shall be set at liberty forthwith unless otherwise lawfully held.

**E-Delivered and dated this 30<sup>th</sup> day of June 2020 at Eldoret**

**H. A. OMONDI**

**JUDGE**