



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISUMU

(CORAM: CHERERE-J)

CRIMINAL REVISION NUMBER 1 OF 2019

**IN THE MATTER OF REVIEW OF SENTENCE UNDER SECTION 354, 364 OF THE CRIMINAL PROCEDURE CODE CAP.
75 LAWS OF KENYA**

AND

IN THE MATTER OF ARTICLE 23 (2) AND 50 (2) (p) OF THE CONSTITUTION OF KENYA, 2010

BETWEEN

HEZRON OGOLLA ODHIAMBO.....APPLICANT

AND

REPUBLIC.....RESPONDENT

RULING

BACKGROUND

1. The Applicant's conviction and sentence to 10 years for the offence of rape contrary to section 3(1) (a) and (c) of the Sexual Offences Act and 6 months for malicious damage to property contrary to section 339(1) of the Penal Code passed in **Criminal Case No. 481 of 2014 Principal's Magistrates Court at Maseno** was upheld in **Kisumu Criminal Appeal 39 of 2015 (Hezron Ogola Odhiambo v Republic [2016] eKLR)**.
2. By an application filed on 9th January, 2019, the Applicant seeks for review of his sentence urging the court to grant him a non-custodial sentence.
3. The application is supported by the Applicant's affidavit in which he avers that he suffers from chronic ulcers and diabetes. In support thereof, he has attached treatment records from Jaramogi Odinga Teaching and Referral Hospital.
4. Mr. Muia for the state opposed the application and urged that the Applicant has a right of appeal if he is dissatisfied by the court order that affirmed his sentence.
5. Section 3 of the Sexual Offences under which the Applicant was convicted in the 1st count provides as follows:-

(1) A person commits the offence termed rape if—

(a) he or she intentionally and unlawfully commits an act which causes penetration with his or her genital organs;

(b) the other person does not consent to the penetration; or

(c) the consent is obtained by force or by means of threats or intimidation of any kind.

(3) A person guilty of an offence under this section is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life

6. The foregoing section leaves no doubt in the mind of the court that its drafters did not intend that anyone convicted of the offence of rape would be sentenced to any sentence less than 10 years let alone a non-custodial sentence.

7. Consequently, the application for revision is considered and found to have no merit and it is dismissed.

DATED AND DELIVERED IN KISUMU THIS 28th DAY OF March 2019

T.W. CHERERE

JUDGE

Delivered in open court in the presence of-

Court Assistants - Felix

Applicant - Present

For the Applicant - Mr Odeny/Mirembe

For the Respondent - Mr Muia