



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**MISC. CR. APPLICATION NO. 35 OF 2018**

**(DEFILEMENT)**

**(CORAM: R. E. ABURILI - J.)**

**MARTIN ONYANGO ODUOR.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

On 23/3/2018, Hon. D.S. Majanja J dismissed the appeal filed by the applicant herein Mr. Martin Onyango Oduor. The judgment was delivered by Hon. T.W. Cherere J, in HCCRA 170/2016 upholding the conviction and sentence imposed on the appellant by C.N. Wanyama RM at Ukwala in Cr. Case No. 424/2016.

The Applicant was charged and convicted of the offence of **Defilement contrary to Section 8(1) (4) of the Sexual Offences Act No. 3 of 2006**. It was alleged that he defiled a child aged 17 years on 31/7/2016 within Siaya County by intentionally causing his penis to penetrate the vagina of M.A. a child aged 17 years.

He was sentenced to serve a minimum of 15 years in accordance with the law. Being dissatisfied with the judgment of the trial court, the Applicant appealed vide Siaya HCCRA 170/2016 which appeal was dismissed, conviction confirmed and sentence upheld by Majanja D.S. J, on 23/3/2018.

In his application filed on 3/7/2018 together with Notice of Appeal, he seeks to be granted leave for waiver of fees and that the leave to appeal out of time be granted; with the Notice of Appeal as filed to be deemed to be duly filed. He grounds upon which he applies are that he is unable to raise court fees for preparation of his record of appeal due to the incarceration in person; that his constitutional rights of appeal will be denied if his application is not granted and that his appeal has high chances of success.

I have considered the application for leave to appeal as a pauper under **Rule 113 of the Court of Appeal Rules**.

I am not satisfied that incarceration impoverishes the convict. The reason for leave to appeal as a pauper is not plausible. I reject it.

The intended appeal is a second appeal. The applicant has not framed a single point of law which the 2<sup>nd</sup> Appellate Court will be asked to determine.

I therefore find that the Application does not raise sufficient cause for granting the same. It is hereby dismissed.

**Dated, Signed and Delivered at SIAYA this 31<sup>ST</sup> DAY OF JULY 2018.**

**R.E. ABURILI**

**JUDGE**