



**Baya alias Juma v Republic (Miscellaneous Criminal Application
E152 of 2023) [2024] KEHC 221 (KLR) (19 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 221 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E152 OF 2023**

**A. ONG'INJO, J
JANUARY 19, 2024**

BETWEEN

GUNGA WAKILI BAYA ALIAS JUMA APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant Gunga Wakili Baya was charged and convicted in Mombasa Chief Magistrates Court CR. Case No. 1736 of 2011 with the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* No. 3 of 2006.
2. Particulars are that between 23rd May 2011 and 25th May 2011 at Kisauni District of the Coast Province the Applicant unlawfully and intentionally caused his penis to penetrate the vagina of LW a girl aged 16 years.
3. The Applicant was found guilty and sentenced to 15 years imprisonment. Applicants appeal in Mombasa H. C. CR. A. No. 41 of 2015 was determined on 12th May 2020 and the same was dismissed and conviction and sentence upheld. The Applicant now seeks that his sentence be reviewed in considerations of his mitigation and that the court takes into account the period he was in custody both before and after conviction.
4. The Applicants mitigating factors are that during his incarceration he had undergone several rehabilitative programmes that are meant to restrain him from engaging in criminal activities in his life. He also submitted that the prisons authority had granted him a favourable progressive report commending his character while in prison. He also said he is 1st offender and a 34 years old young man.
5. Judgment against the Applicant was delivered on 2nd March 2015. He was arrested and charged in 2011. The appellate court considered his submissions a pre-conviction and it was established that he had been on bond prior to his conviction and he was therefore not entitled to benefit from provisions



of Section 333(2) Criminal Procedure Code. It was ordered that his appeal runs from the date he was sentenced on 2nd March 2015.

6. The Applicant has therefore been in custody for 8 years and 10 months. He remains with One (1) year and Two (2) months for which the Probation Office should avail a report as to his suitability to be released on Probation. Mention – 7/2/2024 for Sentence Review.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS THIS
19TH DAY OF JANUARY 2024**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Etropia - Court Assistant

Mr. Ngiri for the Respondent

Applicant- Present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

