



REPUBLIC OF KENYA



**Odhiambo v Republic (Criminal Revision E190 of 2022)  
[2024] KEHC 1576 (KLR) (20 February 2024) (Order)**

Neutral citation: [2024] KEHC 1576 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
CRIMINAL REVISION E190 OF 2022  
A. ONG'INJO, J  
FEBRUARY 20, 2024**

**BETWEEN**

**NELSON AMAYO ODHIAMBO ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(High Court at Mombasa CR Appeal No 99 of 2014) Mativo J) appeared  
against sentence when lower court file MSA CMC R Case No 3118 of 2011)*

**ORDER**

20/02/2023

Before Hon. Lady Justice A. Ong'injo J

Ogwel – Court Asst.

1. The applicant in High Court at Mombasa CR Appeal No 99 of 2014) Mative J) appeared against sentence when lower court file MSA CMC R Case No 3118 of 2011 was not availed. The Judge dismissed appeal for reasons it was not established the sentence was harsh & excessive. It was also not established if the applicant was in remand custody during trial and for how long as the records of the trial court were not availed.
2. I have however considered other authorities where sentence have been reviewed where one was convicted and sentence for offence of defilement eg in *Joshua Gichuki Mwangi v Republic* - CRA No 84 of 2015 the court of Appeal substituted sentence of 20 years with 15 years where appellant was charged with offence of defilement contrary to section 8(1) as read with section 8(3) of the *Sexual Offences Act* No 3 of 2006.



3. In Mombasa High Court CR. Appeal No. 115 of 2017 the appellant was convicted for offence of defilement contrary to section 8(1) & 8(3) of *Sexual Offences Act* and the Judge substituted his sentence of 20 years with 10 years where the victim got pregnant and gave birth to a child as a result of the defilement. I do find that the applicant herein should also enjoy the benefit as the trial magistrate didn't indicate why sentence of 21 years was imposed if at all mitigation was considered.
4. The sentence is therefore reviewed to 15 years jail term from date of sentence. There being no records of the trial court, this court cannot exercise powers under section 333(2) of the *Criminal Procedure Code*.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 20<sup>TH</sup> DAY OF FEBRUARY 2024**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

