



**Apkatum v Republic (Criminal Miscellaneous Application
E046 of 2023) [2024] KEHC 2367 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2367 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E046 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

SOLOMON APKATUM APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant and another namely Chematai Mamayan who escaped from police custody were charged with the offence of Gang rape contrary to section 10 of the *Sexual Offences Act* No. 3 of 2006. The particulars of the charge were that the accused on the 14th day of March, 2019 at Kokwototo Location within Baringo county, jointly, intentionally and unlawfully inserted his genital organ (penis) into the genital organ (vagina) of EK without her consent.
2. The applicant faced an alternative charge of committing an indecent Act with an adult contrary to section 11 (A) of the *Sexual offences Act* No. 3 of 2006, the particulars of the charge were that the accused and another on the 14th day of March, 2019 at Kokwototo Location within Baringo county jointly caused their genital organs (penis) to come in contact with the genital organ (vagina) of EK without her consent.
3. The accused person pleaded not guilty to the charge. The case proceeded for full trial and by judgement delivered on the 15th January, 2020 accused was convicted and sentenced to serve 15 years imprisonment.
4. Dissatisfied with the judgement of the trial court, the accused lodged an appeal to the High vide Kabarnet H.C Criminal Appeal No. E03 OF 2020 on both conviction and sentence which appeal was determined on the 26th January, 2023 and the same was dismissed on both conviction and sentence.



5. The applicant seeks review of sentence on ground that he has reconciled with the victim and he is a family man with a wife and two children who rely on him for survival and they have continued to suffer with his prolonged incarceration.
6. The state counsel Ms. Ratemo submitted that this court had dealt with this matter hence this court has no jurisdiction to deal with the matter.

Determination

7. I have considered the Application herein and wish to consider whether this court has jurisdiction to review the sentence herein. On perusal of the record, I note that the applicant had filed similar application vide review Kabarnet H.C Miscellaneous Criminal Revision No. E009 of 2023 which I heard and determined on the 20th day of July, 2023 dismissing the same. The applicant has not demonstrated any of the circumstances set out for review by the court of appeal in the case of Fredrick Otieno Outa vs Jared Odoyo Okello & 3 others [2017] eKLR where the supreme court listed circumstances under which a court can review its Judgment, Ruling or order. In view of the above, the right forum for the applicant is to seek review of my orders or file appeal before court of appeal. I therefore decline to review my previous orders.
8. Final orders: -
I decline to review sentence herein.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 6TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

- * Applicant present.
- * Ms Ratemo for State.
- * Kibet, Court Assistant.

