



Odhiambo v Republic (Miscellaneous Criminal Application 83 of 2023) [2024] KEHC 4725 (KLR) (7 May 2024) (Ruling)

Neutral citation: [2024] KEHC 4725 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 83 OF 2023**

DO OGEMBO, J

MAY 7, 2024

BETWEEN

MICHAEL KIRA ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for review of sentence and Conviction from conviction of Siaya High Court vide Criminal Appeal No. 9 of 2019 delivered by Hon. Justice R. E. Aburili, J on 25/2/2020)

RULING

1. The Applicant, Michael Kira Odhiambo, has filed herein a Notice of Motion Application. In its body, the application seeks that the court considers the Applicant’s health status. The Applicant has gone on to depone in the Affidavit in support of the Application that he was initially sentenced to serve 20 years imprisonment for the offence of defilement contrary to Section 8 (1) (3) of the *Sexual Offences Act*, No. 3 of 2006. And that on appeal, the sentence was reduced to 10 years imprisonment. The Applicant pleads that he is 85 years old and suffers from hypertension.
2. The prosecution did not make any substantive response to the application of the Applicant.
3. I have considered the application of the Applicant. This application is basically for revision of the sentence. The history of this matter is that the Applicant was initially sentenced to serve 20 years imprisonment, a sentence which on appeal, was revised and reduced to 10 years imprisonment. This was on 25/2/2020.
4. In revising the sentence of the Applicant from the mandatory sentence of 20 years imprisonment as imposed by the trial court to 10 years imprisonment, the High Court considered the circumstances of the Applicant, including his age.



5. This current application is based on 2 grounds. First, on the issue of age, this as I have observed above, was dealt with and formed the opinion of the court in revising the sentence imposed by the trial court. On the 2nd ground of ill health, the applicant has not exhibited any evidence to support this claim. In the absence of any tangible evidence, there is no basis on which this court can act in view of the serious nature of the offence the Applicant was convicted for.
6. I accordingly do not find any merit in this application of the Applicant. I dismiss the same.

DATED, SIGNED AND DELIVERED THIS 7TH DAY OF MAY, 2024.

Read out in Open Court in the presence of the Applicant and Ms. Mumu for State.

File ordered closed.

D. O. OGEMBO

JUDGE

7/5/2024

