



**Ali v Republic (Miscellaneous Criminal Application
E008 of 2024) [2024] KEHC 7306 (KLR) (4 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7306 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BUNGOMA
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2024**

REA OUGO, J

JUNE 4, 2024

BETWEEN

ABDULAZIZ LOYARA ALI APPLICANT

AND

REPUBLIC PROSECUTION

RULING

1. Abdulaziz Loyara Ali the applicant in this matter has filed an application seeking the following orders; that the court should consider the time spent in prison custody during trial as from the time of arrest.
2. In his supporting affidavit he avers that he was charged, tried and convicted, and sentenced to serve 20 years imprisonment for the offence of Defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act*. He seeks that the court consider the period spent in prison and from the date of his arrest. That he has been rehabilitated and has attained good character. He also seeks that the sentence he is serving may be substituted with a non-custodial sentence.
3. The application was opposed by the Respondent. Miss Matere submitted as follows; they objected to the orders being sought. That the sentence meted for 20 years was well merited. The victim was 15 years and she was turned into a mother prematurely and the applicant continues to brag about his unlawful act. The applicant's action had a permanent impact on the victim and the family and such conduct must be curtailed by the law. That his appeal was heard in the High Court and during the appeal he shamelessly referred to the sexual action and said he had fathered a child with the minor. Lastly, they challenge the court's jurisdiction to hear and determine the matter as this court would be revisiting a decision made by a court of similar jurisdiction.
4. I have considered the application and the submissions by the applicant and respondent. The applicant was convicted and sentenced on 8.5.2013. He appealed to the High Court and in a judgment dated 30.3.2017 Justice Ali- Aroni, as she then, upheld the conviction and sentence merited by the law court.



5. This court is a court of equal jurisdiction as the court that heard the applicant's appeal. I agree with the Respondent that I would be revisiting the decision of a court of equal jurisdiction. I lack the jurisdiction to do so. The applicant can pursue the orders sought in the Court of Appeal. I therefore find no merit in the application and I dismiss it. File is closed.

DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 4TH DAY OF JUNE, 2024.

R. E. OUGO

JUDGE

In the presence of:

Abdulaziz Loyara Ali Present in Person

Miss Matere - State Counsel ODDP

Wilkister/ Diana - C/A

