



**Odhiambo v Republic (Miscellaneous Criminal Application
138 of 2023) [2024] KEHC 7291 (KLR) (13 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7291 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 138 OF 2023**

DO OGEMBO, J

JUNE 13, 2024

BETWEEN

KENNEDY OTIENO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

(Being an Application for Sentence Review from Sentence in the PM's at Bondo in Criminal Case No. 739 of 2016 dated 3/6/2017 and delivered by Hon. M. Obiero – PM)

RULING

1. The Applicant, Kennedy Otieno Odhiambo, vide application filed herein on 14/8/2023, pleads for revision of his sentence to account for the period he spent in custody awaiting determination of his case. The prosecution has not made any substantive response to the application of the applicant.
2. Section 333 (2) of the *Criminal Procedure Code* dictates that the period spent in remand custody be accounted for in the sentence of the accused person.
3. I have perused the record of proceedings herein. In sentencing the applicant, the trial magistrate noted;

“I have considered the mitigation by the accused person. The accused is a first offender. However, the sentence prescribed under section 8 (2) of the *Sexual Offences Act* is a mandatory life imprisonment. I have no alternative but to sentence him accordingly. I do sentence the accused to serve life imprisonment. Right of Appeal explained.”
4. The applicant then filed an appeal at the High Court, being Criminal Appeal No. 59/2017. In the judgment of the court read out on 18/12/2019, the court noted as follows in sentencing the applicant;

“On sentence, the appellant was given mandatory sentence having regard to the age of the complainant as stipulated in section 8 (2) of the *Sexual Offences Act*. He was a first offender



and had children as per his mitigation. However as life sentence being minimum is no longer mandatory following the jurisprudence set by the Court of Appeal in Criminal Appeal No. 93 of 2014, *Jared Injiri Koita v R*, [2019] eKLR, applying the principles espoused in *Francis Karioko Muruatetu & others v R*, SC. Petition No. 15/16 of 2015, on the unconstitutionality of mandatory death sentence, I would exercise discretion and resentence the appellant sex pest who took advantage of the innocent child and defiled her, to serve 75 years in prison.”

5. The court did not give indication of when the sentence of the applicant would run. I therefore find merit in this application and revise the sentence. The appellant shall serve 75 years imprisonment as ordered by the appellate court. Same shall run from 27/6/2016, the date applicant was first arraigned in court in compliance with section 333 (2) of the *Criminal Procedure Code*.

Orders accordingly.

DATED, SIGNED AND DELIVERED THIS 13TH DAY OF JUNE, 2024.

D. O. OGEMBO

JUDGE

13/6/2024

