



**Ojwang v Republic (Miscellaneous Criminal Application
E057 of 2023) [2024] KEHC 7368 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7368 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E057 OF 2023**

RE ABURILI, J

JUNE 11, 2024

BETWEEN

ERICK ODHIAMBO OJWANG APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in the Senior Principal
Magistrate's Court Criminal Sexual Offences Case No. 23 of 2017 at Winam)*

RULING

1. This file has been pending in the system since 10th May 2023 without any action. It was trampled upon during case audit.
2. I have considered this application that the court considers the one year that the applicant spent in custody prior to being sentenced to serve 30 years' imprisonment on 31st October 2018.
3. I have also perused the Judgment in HCCRA no 101 of 2018 wherein the Appellant's appeal against conviction for defilement contrary to Section 8(1) as read with Section 8(3) of the *Sexual Offences Act* was dismissed but his appeal against sentence of 30 years in prison was allowed by T. W. Cherere J on 28th November 2019.
4. I observe that in the said judgment, the learned Judge exercised discretion and set aside the 30 years' imprisonment imposed and substituted it with 10 years' imprisonment from 31st October 2018 when the Appellant was sentenced.
5. The learned Judge having made that decision must have been guided by the facts placed before her. This court cannot review Judgment rendered by a court of competent jurisdiction which, in fact, was extremely lenient by resentencing the Appellant to half of the mandatory minimum sentence provided for under Section 8(3) of the *Sexual Offences Act*



6. The Applicant has not placed before this court any material to persuade it that there is any error apparent on the face of that judgment of 28th November 2019 or that there is sufficient cause to interfere with the discretion exercised judiciously by the Learned Judge, that Judgment being the only document placed before this court for consideration.
7. I find the application filed on 5th October 2023 to be devoid of any substance and merit. It is hereby dismissed.
8. This file is closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 11TH DAY OF JUNE, 2024

R. E. ABURILI

JUDGE

