



REPUBLIC OF KENYA



**Swan v Republic (Criminal Revision E131 of 2023)
[2024] KEHC 7405 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 7405 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL REVISION E131 OF 2023
MS SHARIFF, J
JUNE 19, 2024**

BETWEEN

GEORGE ODHIAMBO SWAN APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged in Kisumu CMCR C No. 575 of 2011 of the offence of defilement contrary to Section 8(1) as read with Section (3) of the *Sexual Offences Act* No. 3 of 2006 and was convicted and sentenced to serve a custodial sentence of 20 years on 25th February 2015. He now moves this court for resentencing.
2. Subsequent to the presentation of this revision application I directed the Deputy Registrar on 2nd November 2023 to avail the trial file, that is Kisumu Chief Magistrate's Court Criminal Case No. 575 of 2011, the same has not been availed to-date and no communication has been forthcoming from the Deputy Registrar.
3. A probation/presentence review report was filed herein by William O. Otieno, the Probation Officer Kisumu on 19.1.2024. A perusal of the same reveals that the Applicant herein is a first born and is married with two children aged 30 and 15 years respectively with the last born being in form one. Further that the Applicant was a jua kali electrical technician.
4. The said report indicates that the survivor and her family had relocated and could not thus be traced and were therefore not interviewed.
5. The Applicant's community and the local administration are not opposed to the review of his sentence.
6. The Probation Officer recommends long term non custodial supervision in the event that this court considers revising the Applicant's sentence to a non-custodial one.



7. I do note that the Applicant has so far served a period of 9 years, 4 months and 24 days of his sentence and has a remaining term of 4 years and 4 months, taking into account the fact that his term is subject to a remission of 1/3.
8. While in custody, the Applicant has trained as a carpenter and has acquired grade II in carpentry and joinery. The prison officers have given a positive feedback about him wherefore some of the aims of custodial sentence that is retribution and rehabilitation have been achieved.
9. In light of the above findings, I will exercise my discretion under Section 3 of the Community Service Order No. 8 of 2018 and I will revise the Applicant's sentence by issuing a community service order assigning the applicant community service duties at Kisumu Law Courts for a period of 6 months. The Probation Officer Kisumu and the Chief Magistrate No. 1 to supervise the Appellant during this period.
10. This file is marked as closed.

DELIVERED, SIGNED AND DATED AT KISUMU THIS 19TH DAY OF JUNE, 2024.

M. S. SHARIFF

JUDGE

