



**FOO v Republic (Miscellaneous Criminal Application 87 of 2023)
[2024] KEHC 13390 (KLR) (22 October 2024) (Ruling)**

Neutral citation: [2024] KEHC 13390 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION 87 OF 2023
RE ABURILI, J
OCTOBER 22, 2024**

BETWEEN

FOO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant FOO is a convict in Ukwala PM SO 32/2019 where he was sentenced to serve 10 years imprisonment for gang defilement contrary to Section 10 of the [Sexual Offences Act](#) on 2/9/2020. The victim was aged 15 years old.
2. He appealed vide Siaya HCCRA 87/2023. He does not tell this court what happened to that appeal. He prays that this court considers the period he spent in custody from 8/12/2020 to 4/4/2020 when he was sentenced.
3. I have considered the application and perused the proceedings from Ukwala PM’s Court in SO Case No. 32/2019. The charge sheet dated 10/12/2019 shows that the convict was arrested on 8/12/2019 and he was sentenced on 2/9/2020. He was granted bond but there is no evidence that he availed surety and or that he was released.
4. Nevertheless, as the applicant’s appeal is still pending in this court, that avenue is the right forum for the convict to air his grievance for consideration and not to file different separate proceedings which I find to be an abuse of court process. The application dated 21/6/2023 is accordingly found to be devoid of merit and is hereby dismissed. This file is closed. I so order.

RULING DATED, SIGNED AND DELIVERED THIS 22ND DAY OF OCTOBER, 2024

**R. E. ABURILI
JUDGE**

