



Ojuok v Republic (Petition E030 of 2022) [2023] KEHC 2785 (KLR) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2785 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
PETITION E030 OF 2022
RE ABURILI, J
MARCH 24, 2023**

BETWEEN

MICHAEL ONYANGO OJUOK APPLICANT

AND

REPUBLIC RESPONDENT

*(From original conviction and sentence in Sexual Offences No 1005
of 2015 in the Senior Resident Magistrate's Court at Maseno)*

RULING

1. This Criminal petition was filed on October 5, 2022. The Applicant in his Notice of Motion dated August 12, 2022 claims that he was convicted vide Maseno Senior Resident Magistrate's court Sexual Offences Case No 1005 of 2015 for the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act* and sentenced to serve fifteen (15) years Imprisonment.
2. That he appealed to the High Court vide HCCRA No 30 of 2015 at Kisumu which appeal was dismissed and that he never appealed further to the Court of Appeal.
3. He now wants this court to revise his sentence through a resentencing claiming that the minimum mandatory sentence in sexual offences is unconstitutional as pronounced by Odunga J on May 17, 2022.
4. He further prays that this court allows him to mitigate under Section 216 and 329 of the *Criminal Procedure Code* and considers Section 333(2) of the Criminal Procedure Code for the benefit of the law and interest of justice.
5. This being a petition for resentencing, and the convict having had the opportunity to be heard on appeal, it was incumbent upon him to file before this court proceedings and judgement of the lower court and appeal as the court on appeal to the High Court prepares and served upon convict appellants a complete record of appeal.



6. The petitioner has filed a bare or barren petition without any supporting material for this court to consider. Not even any testimonial from prison is filed to inform this court the extent to which the Petitioner has been rehabilitated or reformed.
7. I find this petition not supported at all for consideration on merit. The same is dismissed.
8. The convict can still file another petition with all supporting documents for consideration by this court on merit.
9. This file is now closed. Convict to be notified via prison email.
10. Signal to be extracted and Ruling typed forthwith.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 24TH DAY OF MARCH, 2023

R. E. ABURILI

JUDGE

