



**Matete v Republic (Criminal Petition E037 of 2022)
[2023] KEHC 3152 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3152 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
CRIMINAL PETITION E037 OF 2022
RE ABURILI, J
APRIL 12, 2023**

BETWEEN

ELKANA MATETE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Petitioner is Elkana Matete. He was convicted and sentenced to serve fifteen (15) years imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(4) of the *Sexual Offences Act*.
2. This was vide Nyando Senior Principal Magistrate's Court Sexual Offences Case No 13B of 2019. This conviction was after a full trial. He was sentenced on December 24, 2020. He has appealed against the conviction and sentence.
3. The Petitioner now seeks for resentencing or sentence review claiming that he was handed a mandatory minimum sentence of 15 years. The Petitioner however claims that his advocate filed an appeal and an application for bail pending appeal vide Notice of Motion dated February 4, 2021, vide HCR Application No. E001 of 2020 which was dismissed on July 27, 2021.
4. He wants this petition to be heard because the position of his appeal is unclear. He does admit that his appeal is still pending. He has not stated what steps he has taken to have his appeal heard since the Judge who allegedly dismissed his application for bail pending appeal was in the station until March 23, 2023.
5. As there is a pending appeal, I direct that:
 1. The Registry to place original court file in Nyando Sexual Offences Case No 13B of 2019 in Kisumu HCRA No E001 of 2021 forthwith and bring up the two files for admission of the appeal for hearing.



2. This petition is premature and found to be devoid of merit. It is hereby dismissed.
6. File closed.
7. I so order.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 12TH DAY OF APRIL, 2023

R. E. ABURILI

JUDGE

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