



**Obala v Republic (Miscellaneous Criminal Application  
E121 of 2022) [2023] KEHC 3150 (KLR) (12 April 2023) (Ruling)**

Neutral citation: [2023] KEHC 3150 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E121 OF 2022**

**RE ABURILI, J**

**APRIL 12, 2023**

**BETWEEN**

**JOSEPH AGUTU OBALA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant is Joseph Agutu Obala. He was convicted and sentenced to serve 75 years' imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(3) of the [Sexual Offences Act](#) vide Kisumu Chief Magistrate's Court Criminal Case No 18 of 2016.
2. He appealed vide Kisumu HCCRA No 116 of 2018 which was determined with the High Court dismissing the appeal against conviction but reducing his sentence to twenty (20) years' imprisonment.
3. He states that he has not filed any further appeal to the Court of Appeal.
4. He now claims that this court should award him lenient and definite sentence as per Article 50(2) (p) (q) of the [Constitution](#) and invoke Section 333(2) of the [Criminal Procedure Code](#) to consider the period spent in custody.
5. I have considered the application as presented. As conceded, the Convict's sentence was reduced to twenty (20) years imprisonment from seventy five (75) years imprisonment, on appeal.
6. This court has no power to reduce that sentence further.
7. On invocation of Section 333(2) of the [Criminal Procedure Code](#), the Applicant has not disclosed when he was arrested and whether he was released on bond and if so, when.
8. In the absence of court proceedings which he used on appeal, this court is unable in the circumstances of this case, to invoke the provisions of Section 333(2) of the [Criminal Procedure Code](#) in his favour,



in such a serious offence where the High Court reduced his sentence and there is a possibility that the time spent in custody if any may have been taken into consideration.

9. I find the application not supported. It is hereby dismissed.

10. File closed.

**Dated, Signed and Delivered at Kisumu this 12<sup>th</sup> Day of April, 2023**

**R. E. ABURILI**

**JUDGE**

