



**Okwemba v Republic (Miscellaneous Criminal Application
E030 of 2021) [2023] KEHC 17673 (KLR) (23 May 2023) (Ruling)**

Neutral citation: [2023] KEHC 17673 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E030 OF 2021**

RE ABURILI, J

MAY 23, 2023

BETWEEN

OBED PETER OKWEMBA APPLICANT

AND

REPUBLIC RESPONDENT

*(From the original conviction and sentence in Senior Principal
Magistrate's Court Sexual Offences Case No. 952 of 2009 at Maseno)*

RULING

1. The applicant Obed Peter Okwemba was convicted and sentenced to serve twenty (20) years imprisonment *vide* Maseno Senior Principal Magistrate Sexual Offence Case No 952 of 2009, on October 15, 2010.
2. He filed Kisumu HCCR application No E030 of 2021 seeking for resentencing and on March 16, 2022, the matter was transferred to Kakamega High Court for hearing and determination under the mistaken belief that the conviction was before Vihiga Magistrate's Court.
3. Kakamega High Court *vide* HCCR miscellaneous application No E016 od 2022 did re-transfer back to Kisumu the matter on May 16, 2023 owing to supervisory jurisdiction.
4. I have considered the application together with the supporting affidavit of the convict/applicant. The applicant is remorseful. He has been in prison now close to 14 years from 2009. He was sentenced on October 15, 2010.
5. In my view, the purpose of punishment and sentencing has been achieved as the convict has served 14 years in prison and he has learnt his lessons following deprivation of liberty for that long for the offence of defilement under section 8(1) as read with section 8(3) of the *Sexual Offences Act*. The complainant was 16 years old. The offence was heinous but the convict has in my view paid for his sins in prison.



6. Although he was handed ‘mandatory’ minimum sentence which was lawful, the convict has served a substantial part of that sentence noting that his mitigations were not considered on account of the mandatory nature of the sentences provided for in the *Sexual Offences Act*. The convict was 20 years old at the time of his conviction, according to the prisons records. It is however not clear whether this was his age as at 2009 or 2010 when he was convicted.
7. I allow the application filed on February 10, 2021 and order that the sentence of fourteen (14) years imprisonment already served is sufficient. Therefore, unless otherwise lawfully held, the convict Obed Peter Okwemba is hereby set at liberty forthwith, following the order that the twenty (20) years imprisonment is hereby reduced to the 14 years’ imprisonment already served, calculated from the date of his arrest in 2009.
8. I so order.
9. File closed.

DATED, SIGNED AND DELIVERED AT KISUMU THIS 23RD DAY OF MAY, 2023

R. E. ABURILI

JUDGE

