



**Were v Republic (Miscellaneous Criminal Application
E042 of 2023) [2023] KEHC 20566 (KLR) (18 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT SIAYA
MISCELLANEOUS CRIMINAL APPLICATION E042 OF 2023**

**DO OGEMBO, J
JULY 18, 2023**

BETWEEN

FREDRICK ODHIAMBO WERE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant, Fredrick Odhiambo Were, has moved this court by a notice of motion application filed on March 31, 2023. The application brought in the matter of various provisions of the Constitution and statutes, seek the following relief:

“ That the sentence of 8 years imprisonment and sentence of 1 year be set to run concurrently or any other order the court may seem just and fit.”
2. It is the applicant's contention that the trial court had ordered the 2 sentences in respect of the 2 counts he faced to run consecutively. And that despite raising the issue before this court during the hearing of his appeal on sentence, the same was not considered by the court.
3. In response, the prosecution submitted that this court has already dealt with the matter of sentence and cannot interfere with the same again.
4. I have considered this application and the 2 sets of submissions. I have also considered the record of proceedings both of the trial court and this court on sentence.
5. The proceedings show the following. The applicant filed count 1 of attempted defilement contrary to section 9 (1) (3) of the Sexual Offences Act, No 3 of 2006. He faced an alternative charge of indecent act with a child contrary to section 11 (1) of the Sexual Offences Act, No 3 of 2006.



6. The applicant also faced count II of assault causing actual bodily harm contrary to section 251 of the [Penal Code](#).
7. Upon his own plea of guilty on count II, the applicant was sentenced to serve 1 year imprisonment. This was on August 20, 2018. The sentence proceedings read in part;

“I have noted that the complainant is a minor and do hereby sentence the accused to serve one year imprisonment. Right of appeal within 14 days.”
8. Thereafter the case of the applicant progressed to hearing for count I. He was eventually convicted on the main count I. On November 28, 2018, he was sentenced to serve 15 years imprisonment on the same. In the sentence the court noted;

“I find that he deserves a deterrent sentence. I hereby sentence the accused to serve 15 years imprisonment. Right of appeal within 14 days.”
9. The applicant thereafter appeared before the High Court on an application for revision of the sentence. In a ruling delivered on February 25, 2020, the court revised the sentence and noted;

“I hereby set aside the 15 years mandatory prison term imposed on the appellant and substitute it with a prison term of 8 years imprisonment to be calculated from the date of his arrest on August 17, 2018.”
10. I do not see any order by the trial court ordering that the sentence of 1 year imprisonment on count II and that of 8 years imprisonment (or 15 years imprisonment by the trial court) on count I were to run consecutively. The 2 sentences were meted out separately and the applicant must surely have served out the sentence on count II as ordered on August 20, 2018.
11. In the circumstances, there is no order subject of revision by this court. I therefore find the application of the applicant filed herein on March 31, 2023 incompetent and totally lacking in merit. I dismiss the same wholly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 18TH DAY OF JULY, 2023

D. O. OGEMBO

JUDGE

18.7.2023

Court:

Ruling read out in open court in presence of the Applicant and Mr. Soita for the State.

D. O. OGEMBO

JUDGE

18.7.2023

