



**Abana v Republic (Miscellaneous Criminal Application 92 of 2023)  
[2024] KEHC 14329 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KEHC 14329 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT SIAYA  
MISCELLANEOUS CRIMINAL APPLICATION 92 OF 2023  
RE ABURILI, J  
NOVEMBER 8, 2024**

**BETWEEN**

**DICKSON OLWANDE ABANA ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The Applicant is Dickson Olwande Abana. He was convicted vide Bondo SPM Sexual Offences Case No. E001/2022 for the offence of defilement contrary to Section 8 (1) as read with Section 8(2) of the *Sexual Offences Act*. The defiled child was aged 5 years. He was sentenced to serve 70 years imprisonment on 9/9/2022.
2. On appeal before this court vide HCRA E029/2022, this court affirmed the conviction and sentence imposed, after dismissing his appeal on 4/4/2023.
3. The convict is back again seeking for sentence review in the interest of justice, that he is now law abiding and that the period spent in remand custody should be considered.
4. I have considered the application for sentence review dated 18/7/2023, the submissions by the convict and the opposing submission by the Respondent /State filed on 10/6/2024.
5. The convict was sentenced to a term sentence after mitigation which was considered and this court upheld the sentence imposed, considering the mandatory sentence of life imprisonment under Section 8 (2) of the *Sexual Offences Act*, which he was spared.
6. That being the case, I find no basis to interfere with the sentence upheld on appeal.
7. On Section 333 (2) of the Criminal Procedure Code, the convict had the opportunity to seek for the court's intervention on appeal. Furthermore, the convict already benefited from a term sentence then, which he would not get, if it were today, following the clarification by the Supreme Court in the *Francis*



Muruatetu & Another Vs. Republic Case that the mandatory minimum sentence under the Sexual offences Act are lawful and constitutional.

8. For the above reason, I find the application by the convict Dickson Olwande Abana to be devoid of any merit and the same is hereby dismissed.
9. Signal to issue.
10. This file is closed. I so order.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 8<sup>TH</sup> DAY OF NOVEMBER, 2024**

**R. E. ABURILI**

**JUDGE**

