

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT SIAYA

MISC. CRIMINAL APPLICATION NO. E058 OF 2021

CORAM. R.E. ABURILI, J

HEZRON OGOLA ODHIAMBO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application seeking Resentence in Criminal Case No. 481 of 2014

at Maseno SPM's Court by Hon. B. Ochieng, Ag. SPM on 06/03/2015) AND

(An Appeal in Criminal Appeal No. 39 of 2015 at Kisumu High Court

by Hon. Justice D. Majanja J. on 27/10/2016)

RULING

1. The Applicant Hezron Ogola Odhiambo was convicted of the offences of rape and malicious damage to property in Maseno SPM's court in Cr. Case No. 481 of 2014. He was aggrieved by the said conviction and sentence and filed an appeal to Kisumu High Court vide Criminal Appeal No. 39/2015 which appeal was determined by Majanja J vide his judgment dated 27/10/2016 wherein the learned Judge dismissed the appeal against conviction but reviewed sentence to 10 years imprisonment.

2. The Applicant/convict filed his application before this court on 23/3/2021 seeking that this court invokes Section 333(2) of the Criminal Procedure Code and orders that his sentence should run from date of his arrest on 1st or 2nd May 2014 not date of conviction and sentence.

3. I have considered the application and supporting affidavit. I decline to entertain it wholly as the applicant has had an opportunity to have his sentence reduced on appeal by a court of competent jurisdiction and in addition, he cannot be heard before this court yet his conviction and appeal were concluded before a court of competent jurisdiction in a different jurisdiction. The applicant convict is no doubt mischievous

4. The application is dismissed.

5. This ruling to be sent to Kisumu High Court CRA No. 39 of 2019 for noting.

6. File closed.

7. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA, THIS 1ST DAY OF APRIL 2021

R.E. ABURILI

JUDGE