

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL APPLICATION NO. E099 OF 2021

CORAM: HON. R.E. ABURILI, J

ALBERT OTIENO ONYANGO.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application for Sentence Review against sentence in Siaya Principal Magistrate's Court in Cr. Sexual Offence Case No. 1 of 2015)

RULING

1. The applicant Albert Otieno Onyango in his application filed on 27/8/2021 claims that he was convicted and sentenced to serve (10) years imprisonment for the offence of defilement contrary to Section 11(1) of the Sexual Offences Act; in Siaya PM Cr. SO 1/2015. He claims that he was in prison remand custody from 1.1.2015 until he was convicted on 25.2.2016.
2. Even assuming that that is the case, the question is where does the 6 years in remand custody arise as claimed that he spent in prison.
3. The applicant is a dishonest person who wants to escape justice meted out on him. He has not stated whether he appealed and if so, whether the appellate court considered that fact of period in remand.
4. No evidence has been adduced to prove his claims which are exaggerated and as he was lawfully sentenced then the question of violation of his right to fair trial and dignity under Article 28 and 50(2) of the Constitution does not arise.
5. He swore an affidavit falsely claiming that he was in remand for 6 years yet from 1.1.2015 to 25.2.2016 is just about one year.
6. In view of the dishonesty on the part of the convict application, I find that he is not deserving of any discretion of the court as it is not clear whether he was on bond or he is lying to the court to escape justice.
7. For the above reasons, I find the application dated 27/5/2021 devoid of any merit. The same is hereby dismissed.
8. File closed.
9. Orders accordingly.

DATED, SIGNED AND DELIVERED AT SIAYA THIS 22ND DAY OF SEPTEMBER 2021

R.E. ABURILI

JUDGE