

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

MISC CRIMINAL APPLICATION NO. 71 (E128) OF 2021

ISAIAH OCHIENG OGOLLA.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

The Applicant, **Isaiah Ochieng Ogolla alias Omera** was convicted of the offence of engaging in **indecent practices** between males contrary to **Section 165** of the **Penal Code**. This was a substitution to the charge of **defilement** of a child contrary to **Section 8(1)** as read with **Section 8(2)** of the **Sexual Offences Act**. The Applicant was sentenced to serve five (5) years imprisonment on 16th July 2019.

The Applicant has now applied to this court to reconsider his sentence. He tells the court that he regrets committing the offence. He is remorseful and had learnt his lesson in the period of his incarceration. He plead with the court to consider the fact that his family has suffered while he has been in prison. His father died. He urged the court to give him a second chance at life and commute the custodial sentence that he has served and release him to enjoy his liberty.

This court has considered the Applicant's plea for reduction of custodial sentence. It has also had the benefit of familiarizing itself with the facts of the case that the Prosecution relied on to secure the Applicant's conviction. It was clear to this court that the Applicant should consider himself lucky he was not convicted under **Sexual Offences Act** because, in this court's considered view, the facts that constitute the charge that he was convicted of could as well have constituted the facts that he could have been convicted under the **Sexual Offences Act**. Since the prosecution did not appeal to challenge the substituted conviction, the Applicant should ride his luck. He could be now serving a stiffer custodial sentence than the one that was imposed by the trial court.

For the above reasons, this court finds no merit with the Applicant's application and proceed to dismiss it. It is so ordered.

DATED AT KITALE THIS 13TH DAY OF OCTOBER, 2021.

L. KIMARU

JUDGE