

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT SIAYA

MISC. CRIMINAL APPLICATION NO. E119 OF 2021

CORAM: R.E. ABURILI, J

BRIAN OBURA ODUOR.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

(Being an Application arising from conviction and sentence of the Principal Magistrate's court at Siaya in Sexual Offence Case No. 7 of 2019 and HCRA 5 OF 2020)

RULING

1. The applicant **Brian Obura Oduor** was convicted of the offence of gang rape vide **Siaya PM Sexual Offence Case No. 7/2019** on 7/8/2020 by Hon. L. Simiyu, Principal Magistrate. He was sentenced to serve 15 years imprisonment.
2. He appealed to this court vide **HCCRA 5/2020** which appeal against conviction and sentence was dismissed by this court upholding the judgment and sentence imposed by the lower court.
3. In the said judgment rendered by this court on 16/12/2020, I made it clear that as the appellant was on bond during the trial, I declined to invoke the provisions of **Section 333 (2) of the Criminal Procedure Code**. I ordered that sentence would run from the date of sentencing in the lower court.
4. The applicant states that he has not appealed and that he owns up to his evil character but that he has reformed hence this court should consider reducing his sentence applying **Section 333(2) of the Criminal Procedure Code** in the interest of justice.
5. Having considered the application and called for and perused the Appeal file before this court, I find that the application seeks review of this court's judgment. This court is **functus officio** the judgment of 16/12/2020. The **Section 333(2)** is inapplicable to the applicant convict who was on bond during trial which section this court referred to in its judgment aforesaid.
6. Accordingly, this application is found to be devoid of any merit and abuse of court process. It is hereby dismissed.
7. File closed. Orders accordingly,

DATED, SIGNED AND DELIVERED AT SIAYA THIS 16TH DAY OF NOVEMBER, 2021

R.E. ABURILI

JUDGE