



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT SIAYA**

**MISC. CRIMINAL APPLICATION NO. 120 OF 2021**

**CORAM: R.E. ABURILI, J**

**TITU OKUMU TITO.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(Application for leave to file appeal out of time from*

*Ukwala SRM SO case No. 334 of 2015 Hon G. Adhiambo,*

*HCRA 57 of 2015 –Makau J and HCRA 148/2016 Aburili J )*

**RULING**

1. This application by the convict applicant **Tito Okumu Tito** stems from the proceedings, Judgment and conviction and sentence passed by **Ukwala PM's Court Sexual offence Case No. 334 of 2015** wherein the applicant herein was charged with the offence of defilement contrary to **Section 8(1)(4) of the Sexual Offences Act**. He was found guilty by Hon. G. Adhiambo and sentenced to serve 15 years imprisonment.

2. The convict appealed to this court vide **HCR 57 of 2015** which was a transferred file from Kisumu High Court vide **Kisumu HC CRA 118 of 2015** and vide judgment of 3/12/2015 delivered by Makau J, the appeal was dismissed and in his presence. This was after a full hearing of the appeal.

3. Again, the convict filed before the court **HCRA 148/2016** on 25/10/2016 and unknown to this court, since the court records had not been computerized and therefore there was no way of knowing duplication of appeals, I heard his appeal and dismissed the challenge against conviction. I however reduced sentence from fifteen (15) years imprisonment to 10 years imprisonment applying the principles laid down in **Francis Muruatetu & Another Vs Republic [2017] eKLR** as applied by the Court of Appeal in **Jared Koita Injiri Vs Republic [2019]eKLR**.

4. The convict having mastered his skill of abusing this court's process, and evidence that he is a skilled deceptive criminal, has filed another application seeking leave of this court to appeal from the judgment, conviction and sentence imposed by not Ukwala Court, but Siaya Chief Magistrate's court and now he quotes **Criminal Case No. 336/2016** which is non-existent from the court records at Siaya. Fortunately, this court's records are now computerized and we can check on such abuses and frauds.

5. The convict is a hardened criminal who has mastered the art of lying to court. This must be brought to an end. The Prisons Service should know this and be aware. I find this application misconceived, mischievous, vexatious and an abuse of court process. It is a waste of judicial time and resources. It is hereby dismissed with a warning to the convict that should he make any other attempt to deceive this court and swear such false affidavits (luckily for him, he did not sweat an affidavit), the court shall not hesitate to order that he be brought before it to be perjured for swearing a false affidavit and be punished accordingly.

6. File closed.

7. Orders accordingly.

**DATED, SIGNED AND DELIVERED AT SIAYA THIS 18<sup>TH</sup> DAY OF NOVEMBER, 2021**

**R.E. ABURILI**

**JUDGE**