



**REPUBLIC OF KENYA**

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

**JUDICIAL REVIEW 1 OF 2020**

**MICHAEL OPANY ODUOR.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

**RULING**

1. The applicant in this Judicial Review Application filed on 17/9/2020 is Michael Opany Oduor. He is also a convict in Siaya PM SO Case No. 63 of 2019. He was convicted and sentenced to serve 10 years for the offence of defilement. He claims that his victim was aged 14 years old.
2. There is no evidence that the Applicant/Convict has appealed challenging his conviction or sentence. He seeks for orders under Article 23(3)(f) of the Constitution, Articles 22, 15(3)(b) and 159(b) (sic) of the Constitution.
3. The Applicant argued his application orally, via virtual Microsoft Teams from his prison custody at Kisumu Maximum Prison. He submitted that he is not appealing but only seeks for sentence Review and that this court should consider imposing a non-custodial sentence because the applicant has been in prison custody from 9/3/2020. He stated that he is a first offender and that he is 23 years old.
4. The Applicant in his application in writing claims that he believed the victim was aged 18 years when he defiled her. He however submitted that she was aged 14 years.
5. I have considered the application for sentence Revision through judicial Review application. There is no allegation or proof of impropriety or irregularity of the conviction or sentence on the part of the convicting and sentencing Magistrate.
6. The allegation that the Applicant believed his victim to be 18 years old should have been a defence under Section 8 of the Sexual Offences Act and not through Judicial Review proceedings. The convict had an opportunity to lodge an appeal to challenge his conviction and sentence if he was aggrieved and not challenge the same through Judicial Review proceedings.
7. I do not find any substance in the application herein that calls for Judicial Review of the judgment, conviction and sentence imposed by the trial court.
8. The Applicant was not even handed the minimum mandatory sentence which he is challenging via Judicial Review proceedings.
9. I find this application for Sentence Review through Judicial Review application an abuse of court process. The application is hereby found to be devoid of merit. It is dismissed.
10. The file is closed.
11. Orders accordingly.

**Dated, signed and delivered at Siaya this 14<sup>th</sup> Day of October 2020.**

**R.E. ABURILI**

**JUDGE**