



**REPUBLIC OF KENYA**

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

**CRIMINAL REVISION NO. 20 OF 2019**

**(CORAM: HON. R.E. ABURILI - J)**

**DLAA.....APPLICANT**

**VERSUS**

**REPUBLIC.....RESPONDENT**

*(An Application seeking Revision of Sentence from Judgment delivered on*

*1/2/2010 vide Siaya PM's Court in Cr. Case 704 of 2017 before Hon. W.K. Chepseba, PM)*

**RULING**

1. The Convict **DLAA** is aged 46 years. He was convicted for the offence of incest contrary to **Section 20(1) of the Sexual Offences Act** and sentenced to serve 15 years imprisonment vide PM's court at Siaya on 1.2.2010 by Hon. W.K. Chepseba in Cr. Case No. 704 of 2007.
2. The victim of the offence EAA was a girl aged 15 years and was the convict's daughter.
3. The convict pleaded not guilty and the trial proceeded. From the victim's evidence in court, the convict who is her father waylaid her in the room where she slept with her other siblings and defiled her not once but twice, on 27/9/2007 at midnight and on 30/9/2007 at 1.00 a.m.
4. PW4, a Clinical Officer confirmed that the child had been defiled.
5. The convict had separated with the child's mother but he was married to a teacher. He was also a primary school teacher.
6. During the trial, and before judgment was delivered, the convict vanished. He was brought to court under a warrant of arrest.
7. The convict has not appealed against the sentence which was imposed on him. He has been in prison for 9½ years and has close to 5 years to complete the sentence.
8. The Probation Officer recommends that he be released on Probation of six months because he has reformed. The wife has since remarried. He has 4 children. He has acquired skills and trained in prison. He will require moral and psychological support to reintegrate in society.
9. If he qualifies for remission then he can be released by January 2020. He is a Trustee in prison. He has done Biblical studies, Masonry and trained in Human Rights.
10. He used to abuse alcohol prior to the incarceration.
11. The victim who is his daughter was never traced for interview. The family and community are ready to receive him as he has spent a long time in prison.
12. The remainder of the prison term is short, just about 6 months as he is a Trustee in prison.
13. However, upon perusal of the trial court record, I have discovered that the applicant appealed against conviction and sentence vide **Kisumu HC CRA NO 13 of 2010** which was dismissed.
14. The appellant having exercised his right of appeal cannot have a second bite at the cherry. He cannot apply for revision of sentence where his appeal against sentence was dismissed. This court lacks jurisdiction to revise its own decision on sentence.

15. For the above reasons, I find this application for revision of sentence mischievous and misguided. The same is hereby dismissed and the file closed. Orders accordingly.

**Dated, signed and Delivered at Siaya, this 11<sup>th</sup> Day of July 2019.**

**R.E. ABURILI**

**JUDGE**