

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUSIA
MISCELLANEOUS CRIMINAL APPLICATION NO. E027 OF 2025

ALFRED NYONGESA OUMA.....
.....APPLICANT

VERSUS

REPUBLIC.....RESPONDENT

RULING

1. The applicant herein had been charged, in Busia CMCCRC No. 819 of 2011, with defilement of a minor female, contrary to section 8(1)(3) of the Sexual Offences Act, Cap 63A, Laws of Kenya, was convicted and sentenced to serve 20 years in prison. He filed an appeal, in Busia HCCRA No. 65 of 2013, which he withdrew, ostensibly after the respondent issued a notice for enhancement of sentence. The appeal was dismissed.
2. He has now come back to the High Court; to seek reckoning of the period he spent in custody in the sentence imposed. His application is dated 16th May 2025.
3. The issue raised, in the application herein, should have arisen in the appeal in Busia HCCRA No. 65 of 2013, which the applicant, in his wisdom, chose to withdraw. The petition of appeal, dated 17th September 2013, indicates that the appeal was exclusively on sentence. If he had pursued it to its logical conclusion, he would have had opportunity to argue that point, and the High Court would have had a chance to consider it.
4. I do not find the basis under which I should consider the issue now, when there was a chance for it to be considered previously, which was defeated by the withdrawal of the

appeal. I, accordingly, dismiss the application, dated 16th May 2025. This file shall be closed.

5. The Deputy Registrar shall cause a certified copy of this ruling to be made available to the applicant, for information, through the officer commanding the prison where he is serving sentence. Orders accordingly.

**DELIVERED, VIA EMAIL, DATED AND SIGNED IN CHAMBERS,
AT BUSIA, ON THIS 17TH DAY OF OCTOBER 2025.**

**W MUSYOKA
JUDGE**

Mr. Arthur Etyang, Court Assistant.

Mr. Alfred Nyongesa Ouma, the applicant, in person.

Advocates

Mr. Tony Onanda, instructed by the Director of Public Prosecutions, for the respondent.