



**Odhiambo v Republic (Miscellaneous Criminal Application
E162 of 2025) [2026] KEHC 2924 (KLR) (6 March 2026) (Ruling)**

Neutral citation: [2026] KEHC 2924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KISUMU
MISCELLANEOUS CRIMINAL APPLICATION E162 OF 2025**

A MABEYA, J

MARCH 6, 2026

BETWEEN

MOSES OTIENO ODHIAMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Moses Otieno Odhiambo was on 29/12/2021 arraigned before the Winam Law Courts with the offence of Sexual Assault contrary to section 5(1) (b) (2) of the [Sexual Offences Act](#) No. 3 of 2006.
2. It was alleged that on 19/12/2021 at Nyamasaria area Nyalunya Sub-location, Kisumu East Sub-County within Kisumu County, he unlawfully manipulated the legs of C.A a child of 3¹/₂ years so as to cause penetration of her vagina by the use of his fingers. There was a second count of indecent assault.
3. The applicant was tried, found guilty, convicted and sentenced to 10 years imprisonment. He did not appeal against the said sentence.
4. By an undated Motion on Notice, he has sought that he be admitted to a non-custodial sentence. That he has fully been rehabilitated, is a family man with school going children and that he is remorseful.
5. I have considered the record. I have also considered the mitigation set out in the applicant's supporting affidavit. The said mitigation may be compelling but sentences under the [Sexual Offences Act](#) are not ones which can be reviewed on prison decongestion. They do not fall in the category under which this Court can consider a review under the Community Service Order Act for purposes of prison decongestion.
6. That being the case, this Court finds that the application is unmerited and hereby dismisses the same. It is so ordered.



DATED AND DELIVERED AT KISUMU THIS 6TH DAY OF MARCH, 2026.

A. MABEYA, FCI Arb

JUDGE

