

**REPUBLIC OF KENYA**

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

**CRIMINAL DIVISION**

**CRIMINAL MISC. APPLN NO. E160 OF 2025**

**EZEKIEL ORANGE VIRIMO ..... APPLICANT**

**- VERSUS -**

**REPUBLIC ..... RESPONDENT**

**R U L I N G**

1. **EZEKIEL ORANGE VIRIMO** ('the applicant') was on **22/7/2020** arraigned before the Tamu Senior Resident Magistrate's Court for the offence of defilement contrary to *section 8(1) as read with subsection (3) of the Sexual Offences Act No. 3 of 2006*.
2. It was alleged that on **15/12/2019** at about 20.45hrs, in Kapsamwe area, in Muhoroni Sub-County, within Kisumu County, he intentionally and unlawfully caused his penis to penetrate the vagina of B.A a child of 15 years.
3. He was tried, found guilty, convicted and sentenced to 15 years' imprisonment. He appealed to this Court vide **Ksm Criminal Appeal No. E020 of 2021** whereby in its judgment delivered on **18/5/2022**, this Court (**Kamau J**) upheld both the conviction and sentence.

4. By an undated Motion on Notice, the applicant has sought that the said sentence of 15 years be reduced. The grounds are that he has 5 school going children. That the said children risk dropping out of school and becoming destitute. That he should be considered for non-custodial sentence. **Ms. Kagali** left the issue to Court since it is in the Court's discretion to review sentences.
5. I have considered the record. I note that there is no jurisdiction to review a sentence meted by this Court. The applicant rightly appreciates that he did not appeal against the Judgment of Kamau J as there were no points of law. Indeed, that Judgment clearly indicated that the period the applicant has spent in custody prior to his conviction and sentence be taken into consideration while computing his sentence. That was clearly in consonance with ***section 333(2) of the Criminal Procedure Code.***
6. That being the case, I find the application to be without merit and dismiss the same accordingly.

It is so ordered.

**DATED** and **DELIVERED** at Kisumu this **6<sup>th</sup>** day of **March, 2026.**

**A. MABEYA, FCI Arb**

**JUDGE**