



**Ramadhan v Director of Public Prosecutions (Miscellaneous Criminal Appeal E035 of 2023) [2025] KEHC 11407 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEHC 11407 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KAKAMEGA  
MISCELLANEOUS CRIMINAL APPEAL E035 OF 2023**

**S MBUNGI, J**

**JULY 29, 2025**

**BETWEEN**

**STEPHEN OJANGO RAMADHAN ..... APPLICANT**

**AND**

**DIRECTOR OF PUBLIC PROSECUTIONS ..... RESPONDENT**

**RULING**

**The Facts**

1. The applicant was arrested and charged in Mumias vide in two counts:
  - I. Defilement contrary to section 8[1] as read with section 8 [2] of the *Sexual Offences Act* no.3 of 2006.
  - II. Committing an indecent act with a child contrary to section [1] of the *Sexual Offence Act* No.3 of 2006.He was acquitted in Count 1 but convicted in Count 2.
2. That on conviction he was sentenced for a period not exceeding 7 years which he now challenges vide this Miscellaneous Application.
3. The applicant herein filed a Notice of Motion dated on 20<sup>th</sup> March.2024 seeking the following orders:
  - a. That the court be pleased to find that the intended effect of 7years imprisonment sentence can be achieved with a less severe Sentence and for punishment- like non -custodial punishment.
  - b. That the imposed years to be reviewed downwards to a more lenient one- based on the following grounds:



- i. That, the applicant is a first offender, remorseful and who has been of good conduct and behavior while in prison.
  - ii. That, the applicant is a family man with two children and a house wife who depend on him.
  - iii. That, the applicant's background is of good conduct where the society and community at large want to associate with the applicant.
  - iv. That, the applicant has a right to apply for his review before this court.
  - v. That, the applicant has got no other pending issue such as criminal or civil case in any court of law within the republic and is further supported by the annexed sworn affidavit of Stephen Ojango herein the applicant.
4. The applicant filed a supporting affidavit dated 11<sup>th</sup> September ,2023 .
  5. The application is opposed , the respondent filed grounds of opposition dated 11<sup>th</sup> September 2023. The grounds are as follows.
    - i. The Applicant had not demonstrated that the punishment meted out by the trial court was erroneous and or excessive.
    - ii. That the Applicant had an advanced case which was not recognized by law.
    - iii. That if the Applicant herein was dissatisfied with the decision of the trial court, he ought to have moved to the High Court to appeal.
    - iv. That sentencing is the preserve of the trial court and the Applicant had not demonstrated why the same should be disturbed by the High Court.
    - v. That the trial court had enjoyed a wide discretion to determine the type and severity of the sentence based on the prevailing circumstances.
    - vi. The Applicant had not demonstrated that the Trial Magistrate had passed the sentence ignoring to consider an important matter or circumstance which he out to have considered.
    - vii. The Applicant had not demonstrated that the sentence imposed was wrong in principle.
    - viii. The Applicant had not demonstrated that there were the mitigation factors that the court did not take into account.
  6. That parties agreed to dispose of the application by way of filing written submissions, the applicant filed, the respondent did not file.
  7. I have looked at the Application, the supporting affidavit, the grounds of opposition and the Applicants submissions.

### **Analysis and Determination**

8. I have looked at the applicants application, Section 11 of the *Sexual Offences Act* provides that any person convicted under that section should be sentenced to serve a term of not less than 10 years. He was sentenced to serve 7 years which was less than the minimum . There is no way he can get a lesser sentence in view of the recent Supreme Courts decision decreeing that all minimum sentences under *Sexual Offences Act* are legal. I say no more.



**DATED SIGNED, AND DELIVERED IN OPEN COURT AT KAKAMEGA THIS 29<sup>TH</sup> OF JULY, 2025.**

**S. N. MBUNGI**

**JUDGE**

In the presence of;

Court Assistant - Fred Owegi

Loice Osoro for the Respondent, present.

Applicant, present.

