



**Shally v Republic (Miscellaneous Criminal Application
E184 of 2023) [2024] KEHC 522 (KLR) (26 January 2024) (Ruling)**

Neutral citation: [2024] KEHC 522 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E184 OF 2023**

**A. ONG'INJO, J
JANUARY 26, 2024**

BETWEEN

HISHAM SHALLY APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Application

1. The applicant Hisham Shally was charged in Mombasa Chief Magistrate's Court Sexual Offence Case No 11 of 2019 with the offence of defilement contrary to section 8 (1) as read with 8 (2) of the [Sexual Offences Act](#) No 3 of 2006.
2. The particulars of the offence were that Hisham Shally on diverse dates between May 2018 and February 2019 within Likoni Sub-County in Mombasa County intentionally caused his penis to penetrate the vagina of ZA a child aged 10 years.
3. In the alternative charge, the applicant Hisham Shally committed an indecent act with a child contrary to section 11 (1) of the [Sexual Offences Act](#) No 3 of 2006.
4. The particulars of the offence were that Hisham Shally on diverse dates between May 2018 and February 2019 within Likoni sub-county in Mombasa county intentionally touched the vagina of ZA a child aged 10 years with his penis.
5. The applicant was sentenced to 30 years imprisonment and he appealed against the conviction and sentence *vide* Criminal Appeal No E087 of 2021 at Mombasa High Court whereby the 30 years sentence was upheld.



6. Upon perusal of the file in High Court Criminal Appeal No E087 of 2021, this court has noted a Notice of Appeal filed by the applicant on March 23, 2023 against the judgment of hon Lady Justice F Mugambi delivered virtually on March 17, 2023.
7. Considering that there is an appeal pending before the Court of Appeal, the application herein cannot be given an audience of the High Court and the same is dismissed.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,
THIS 26TH DAY OF JANUARY 2024**

HON. LADY JUSTICE A. ONG'INJO

JUDGE

In the presence of: -

Ogwel- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

HON. LADY JUSTICE A. ONG'INJO

JUDGE

