



REPUBLIC OF KENYA



**Avaye v Republic (Miscellaneous Criminal Application  
E038 of 2024) [2024] KEHC 8043 (KLR) (28 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 8043 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT KISUMU  
MISCELLANEOUS CRIMINAL APPLICATION E038 OF 2024**

**RE ABURILI, J**

**JUNE 28, 2024**

**BETWEEN**

**JOHN MUNYOLE AVAYE ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

*(From the original conviction and sentence in the Senior Principal  
Magistrate's Court Criminal Sexual Offences Case No. 954 of 2015 at Winam)*

**RULING**

1. The Applicant John Munyole Avaye is a convict in Winam SPM Sexual Offences Case No. 954 of 2015 wherein he was sentenced to serve 20 years' imprisonment for the offence of defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act*.
2. He appealed vide HCCRA No. 20 of 2018 which was dismissed on both conviction and sentence. He does not indicate whether he appealed to the Court of Appeal.
3. He has also not annexed any record of proceedings leading to his conviction and sentencing or judgment on appeal. He annexed only annexed certificates of what he has learnt while in prison.
4. I find no material upon which to exercise discretion and review the sentence which was upheld by the Court on Appeal.
5. More so, the convict could have been sentenced to life imprisonment had the trial court not exercised discretion and imposed a 20 years prison term.
6. The application dated 13<sup>th</sup> February 2024 is hereby found to be devoid of any merit and dismissed.
7. Signal to issue.



8. This file is closed.

**DATED, SIGNED AND DELIVERED AT KISUMU THIS 28<sup>TH</sup> DAY OF JUNE, 2024**

**R. E. ABURILI**

**JUDGE**

