



**Bawoy v Republic (Miscellaneous Criminal Application E028 of 2024)  
[2024] KEHC 15810 (KLR) (16 December 2024) (Ruling)**

Neutral citation: [2024] KEHC 15810 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT GARISSA  
MISCELLANEOUS CRIMINAL APPLICATION E028 OF 2024**

**JN ONYIEGO, J  
DECEMBER 16, 2024**

**BETWEEN**

**ISSACK MOHAMUD BAWOY ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The appellant was charged with the offence of defilement c/s 8(1)(4) of the *sexual offences Act* No.3 of 2006. Particulars are that on diverse dates within the month of April 2021 within Hagadera refugee camp in fafi sub-county, within Garissa county, he intentionally and unlawfully caused his penis to penetrate the Vagina of SMA a child aged 16 years. He was also charged with an alternative count of committing an indecent act with a child c/s to 11(1) of the *sexual offences Act*.
2. Having pleaded not guilty, the matter proceeded to full trial to which he was convicted and sentenced to serve 15 years imprisonment. He has now moved to this court seeking for leniency on grounds that he has reformed.
3. Prosecution opposed the application arguing that the court is functus officio. I have considered the application herein and the response thereof.
4. It is trite that sentencing is at the discretion of the trial court and an appellate court can only interfere with the same if established that the trial court applied wrong legal principles, considered irrelevant factors or took into consideration irrelevant factors or it is harsh or excessive. See *Ogolla s/o Owuor v Republic* (1954) EACA where the court held as follows.

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors.”



5. The applicant is not challenging the conviction. He is arguing that the sentence is harsh in the circumstances. The sentence provided for the offence allegedly committed is a minimum of 15 years. The court considered his mitigation as well. It is my finding that the sentence meted out was legal and appropriate. He was given the minimum sentence hence not harsh.
6. In view of the above holding, I do not find merit in the application and the same is thus dismissed and the applicant shall serve his sentence.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 16<sup>TH</sup> DAY OF DECEMBER 2024**

**J. N. ONYIEGO**

**JUDGE**

