



**Mwazagai v Republic (Miscellaneous Criminal Application
E052 of 2022) [2024] KEHC 9566 (KLR) (26 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9566 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E052 OF 2022**

GMA DULU, J

JUNE 26, 2024

BETWEEN

SAMUEL MWAZAGAI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. This is an application filed on 20th December 2022 by Samuel Mwazagai seeking review of sentence and is grounded on Article 50(2)(p)(q) of the Constitution of Kenya, and Section 333(2) of the Criminal Procedure Code (Cap.75), as well as the case of Vincent Sila Juma & 87 Others =Versus= Attorney General.
2. The application was filed with a supporting affidavit sworn by the applicant on 29th November 2022 in which it was deponed by the applicant that the statutory minimum mandatory prison sentence imposed upon the applicant for the offence violated his rights under Article 27 of the Constitution.
3. The application was canvassed through written submissions, and in this regard I have perused and considered the submissions filed by the applicant as well as the submissions filed by the Director of Public Prosecutions.
4. I note that in the submissions on both sides, the applicant is designated as appellant, but indeed this is not an appeal, and thus he is an applicant and not an appellant. In the amended grounds also, the applicant even challenged the findings on conviction on the ground that the trial court did not consider adequately his alibi defence, which in my view cannot be considered by this court in an application for review of sentence. Such ground could only be considered in an appeal.
5. Coming back to the request for review of sentence, the applicant was sentenced to ten (10) years imprisonment for raping a woman of 73 years and who suffered from dementia.



6. The maximum statutory sentence for the offence of rape was life imprisonment, and though the trial Magistrate considered that the applicant was a first offender, he also took into account that the complainant was of advanced age and mentally challenged in determining the sentence. In my view, the sentence of 10 years imprisonment was thus justified.
7. Having stated as above, I note that the applicant was in remand custody during trial from 9th March 2020 to 16th September 2021 when he was sentenced a period of 1 year and six months, which the trial Magistrate did not mention or take into account in sentencing.
8. As such, though the Director of Public Prosecutions opposes the request for review of sentence, in view of the provisions of Section 333 (2) of the *Criminal Procedure Code* demand that that period be taken into account, and I will thus order that the prison sentence will run from the date of arrest.
9. I thus uphold the sentence of ten (10) years imprisonment imposed on the applicant by the trial court. I however order that the prison sentence will run from 9th March 2020 when the applicant Samuel Mwazagai was arrested.

DATED, SIGNED AND DELIVERED THIS 26TH DAY OF JUNE 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant in person

Mr. Sirima for State

