Din v Republic (Miscellaneous Criminal Application E049 of 2021)
[2023] KEHC 2721 (KLR) (24 March 2023) (Ruling)

Neutral citation: [2023] KEHC 2721 (KLR)

REPUBLIC OF KENYA

IN THE HIGH COURT AT KAKAMEGA

MISCELLANEOUS CRIMINAL APPLICATION E049 OF 2021

WM MUSYOKA, J

MARCH 24, 2023

BETWEEN

RICHARD DIN ..... APPLICANT

AND

REPUBLIC ..... RESPONDENT

RULING

1. On 24th June, 2022, I called for the records in Butali PMCCRC No. 698 of 2011 and Kakamega HCCRA No. 146 of 2012, to help me determine whether I should revise the sentence imposed, to align it to section 333(2) of the *Criminal Procedure Code*, Cap 75, Laws of Kenya. The directions of June 24, 2022 have partially been complied with, for the file in Kakamega HCCRA No. 146 of 2012 has been made available, but not the file in Butali PMCCRC No. 698 of 2011.

2. Sentencing in Butali PMCCRC No. 698 of 2011 was done on June 22nd, 2012, according to the record of appeal filed in Kakamega HCCRA No. 146 of 2012. There was no reference to section 333(2) of the *Criminal Procedure Code* in the sentencing ruling. However, section 333(2) of the *Criminal Procedure Code* applies only with respect to the period spent in custody pending trial, conviction and sentence. Plea was taken on November 8, 2011. Bond was given of Kshs. 100, 000.00, or cash bail of Kshs. 50, 000.00. Bond was processed the same day, and a payslip and a copy of the national identity card for the surety was deposited in court. There is nothing, in the record, to indicate that the bond was ever cancelled at any time, and the applicant spent time in custody.

3. In view of what I have stated in paragraph 2 above, section 333(2) of the *Criminal Procedure Code* does not apply to this case, and the application herein for review of sentence is without merit, and is hereby dismissed.

4. As to whether the Muruatetu principles, as set by the Supreme Court, with regard to murder, and extended to sexual offences by the High Court, should apply, I note that the issue of the sentence

imposed was considered by the appellate court in Kakamega HCCRA No. 146 of 2012. The sentence was affirmed, indeed the appellate court noted that the sentence was lenient, given the circumstances of the commission of the offence.

5. The appellate court said, at paragraph 45 of the judgment delivered on October 28, 2015:

> " The Appellant was handed down a very lawful sentence. Section 8(4) of the *Sexual Offences Act* gives the minimum sentence on conviction as 15 years and that is what the Appellant was sentenced to. He is serving the minimum possible sentence in law. Infact the Appellant ought to consider himself very lucky since despite the aggravating factors which included locking up the complainant in his house for several days as he went to work and repeatedly having unlawful sex with her, the Court exercised extreme leniency and handed him the minimum sentence."

6. The sentiments above were expressed by a court exercising a jurisdiction commensurate to mine. I am bound by that finding, and I cannot, while exercising concurrent jurisdiction, purport to revise it, as doing so would amount to a Judge of the High Court sit on appeal on the finding of another Judge of the High Court. So, nothing turns on the Muruatetu principles.

7. Overall, the sentence is not available for review or revision.

DELIVERED, DATED AND SIGNED AT KAKAMEGA ON THIS.....24th .....DAY OF .....March.....2023

WM MUSYOKA

JUDGE

Erick Zalo, Court Assistant.

Richard Din, the applicant, in person.

Ms. Kagai, instructed by the Director of Public Prosecutions, for the respondent.

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