



REPUBLIC OF KENYA



KENYA LAW
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**Kalasinga v Republic (Criminal Revision 121 of 2022)
[2023] KEHC 20066 (KLR) (29 June 2023) (Ruling)**

Neutral citation: [2023] KEHC 20066 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION 121 OF 2022
SC CHIRCHIR, J
JUNE 29, 2023**

BETWEEN

KELVIN MUKHBI KALASINGA APPLICANT

AND

REPUBLIC RESPONDENT

*(Being an application for revision of sentence meted in Kangema
Chief Magistrate's Court Sexual Offences Case Number 25 of 2020.)*

RULING

1. The applicant filed this petition seeking revision of his nine (9) year sentence meted out by the trial court in Kangema Chief Magistrate's Court Sexual Offences Case Number 25 of 2020.
2. He was charged with the offence of rape contrary to section 3 (1) as read with section 3 (3) of the *Sexual Offences Act* No 3 of 2006. The complainant LWT suffered from mental disability. The trial court convicted the applicant and sentenced him to 9 years' imprisonment.
3. The review is sought on the following grounds:
 - a. That the Appellant is languishing in custody on a mandatory minimum sentence
 - b. That he is a first offender and highly remorseful and regrets what happened.
 - c. That he is a young energetic man of 22 years building a foundation for his family
 - d. That he is a bread winner to his family (his wife and 2 children) and his aging parents and that they will continue to suffer if he continues to stay in custody.
 - e. That he has a nagging chest pains and Tendonitis for which he needs to be released so as to get treatment and care



- f. That he has been rehabilitated and reformed since he has been in prison since July 25, 2020 and that he participated in different trainings in prison such as bible studies, carpentry and soap making
 - g. That he is well behaved and an epitome to others.
4. The Appellant adopted the grounds as his submissions.
 5. In rejoinder, Ms Muriu for the Respondent opposed the application by way of oral submissions. She told on the court that the Applicant was seeking a lenient sentence when in fact he got less than what he deserved as the offence attracted a minimum sentence of 10 years. It is further submitted that the trial court considered the time the applicant had spent in custody in meting out the sentence of 9 years.
 6. It is further submitted that the victim suffered from mental disability, which is an aggravating factor under the Judiciary sentencing policy guidelines and urged the court not disturb the sentence for the reasons provided.

Determination

7. The Revision powers of the High court are contained in Article 165 (6) and (7) of the [Constitution](#) and section 362 through to 366 of the [Criminal Procedure Code](#) (cap75).
8. Article 165(6) of the [Constitution](#) provides as follows:

“The High court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising judicial or quasi- judicial function but not over a superior court”

Article 165(7), states as follows:

For the purpose of clause (6), the high court may call for the record of any proceedings before any subordinate court or person or body or authority referred to in clause (6), and may make any order or give any direction it considers appropriate to ensure the fair administration of justice”
9. Section 362 of the [Criminal Procedure Code](#) provides as follows: -

“362. The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.
10. Section 3 (3) of the [Sexual Offences Act](#) provides that a person guilty of an offence of rape is liable upon conviction to imprisonment for a term which shall not be less than ten years but which may be enhanced to imprisonment for life. The trial magistrate sentenced the appellant to 9 years which as pointed out by the respondent was less than the mandatory minimum sentence provided for the offence of rape under section 3 of the [Sexual Offences Act](#).
11. Does the Applicant’s sentence legible for revision?



To restate, when the high court is exercising the power of revision under section 362 of the Criminal Procedure Code the power is limited to checking

“the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of any such subordinate court”.

12. What the Applicant has placed before this court is the issue of sentencing only. The Sexual Offences Act, under section 3(3), prescribes a minimum sentence of 10 years. In this case the court went on to discount the sentence by one year being the period that the Applicant had spent in prison, prior to conviction. The sentence was founded in law. There is nothing incorrect, illegal or inappropriate about the sentence to warrant a review by this court under the aforesaid section 362 of the Civil Procedure Code. Further the sentence is mandatory and therefore this court has no power to reduce it.
13. The Applicant has sought reliance on the High Court decision in *Edwin Wachira & 5 others v Republic* (Mombasa High Court Petition No 97 of 2021) to argue for a revision . However am bound by the decision of the supreme court in *Francis Muruatete & ano v Republic* (2017) eKLR in which the court stated that their finding on the unconstitutionality of the mandatory minimum sentences sentences did not apply to the sentences spelt out in the Sexual Offences Act, among others.
14. In a nutshell, the Application is unmerited. It is hereby dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAKAMEGA THIS 29TH DAY OF JUNE, 2023.

S. CHIRCHIR

JUDGE

In the presence of:

The Appellant.

