



**Gori v Republic (Miscellaneous Criminal Application E012 of 2022)
[2023] KEHC 26912 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEHC 26912 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT BOMET
MISCELLANEOUS CRIMINAL APPLICATION E012 OF 2022**

RL KORIR, J

DECEMBER 15, 2023

BETWEEN

EDWARD MAGIA GORI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant was charged with the offence of defilement contrary to Section 8(3) of the [Sexual Offences Act](#) No. 3 of 2006. He was convicted of the alternative charge of committing an indecent act with a child contrary to Section 11(1) of the [Sexual Offences Act](#) No.3 of 2006 and sentenced to serve 10 years in prison.
2. The Applicant applied for re-sentencing and relied on the grounds reproduced verbatim as follows: -
 - i. That I pray for resentencing- as the mitigation I gave was not considered together with the circumstances, nature and evidences on record before the sentence was arrived at 10 years' imprisonment was mandatory minimum prescribed sentence thus a prejudice as there was a possibility of a lesser sentence if considered.
 - ii. That I pray for resentencing since the mandatory minimum prescribed sentence awarded to me on the offence of indecent act contrary to section 11(1) of the [Sexual Offences Act](#) was unconstitutional, inhumane, torturous/cruel and degrading in breach of Article 2(1)(3)(4), 25 and 28 of the [current constitution](#) and section 74 of the [Old Constitution](#).



- iii. That I the Petitioner herein humbly beg leave to appear before your honourable court in bid to impose a sentence which is proportionate as per the above referred section of the law since the High Court Judge at Machakos recently ruled that
- “ mandatory minimum prescribed sentence as provided for contrary to section 11(1) of the *Sexual Offences Act* is hereby declared unconstitutional”.
- iv. That I the Petitioner herein rely on the case of *Francis Karioko Muruatetu and another v Republic* (Supreme Court Petition No. 15 of 2015) that declared the mandatory minimum sentence unconstitutional thus seeking for appropriate sentence.
3. In his oral submissions, the Applicant submitted that he had changed his ways after being convicted and that he had already served 6 years of his sentence. It was his prayer that this court reduces his sentence so that he could go home to support and educate his children. He further submitted that he be given a non-custodial sentence.
4. It was the Applicant’s submission that the days he spent in remand be included in his sentence.
5. The Respondent submitted that they were not opposed to the prayer for the re-computation to include the Applicant’s remand days.
6. It was the Respondent’s submission that the Supreme Court clarified in *Muruatetu 2* that the principles only applied to murder cases. That the sentence imposed was lawful and that the trial court did not err in issuing it.
7. This court received a recommendation letter dated 19th January 2023 from Kericho Medium Prison where the Applicant was serving his sentence. The letter stated that the Applicant had served about five and a half years of his sentence and that he had changed his ways and that he had undergone various spiritual rehabilitation programs. I have gone through and considered the various certificates attached to the recommendation letter.

Analysis and determination

8. I have gone through the court record and I have noted that the Applicant preferred an Appeal to this court being Bomet High Court Criminal Appeal Number 27 of 2018. The Appeal was heard and a Judgment was delivered by Ongeru J. on 1st July 2020 where she dismissed the Appeal and upheld the trial court’s conviction and sentence.
9. As a general rule, the High Court can only review the Judgment of a subordinate court as provided for under sections 362 to 364 of the *Criminal Procedure Code*. This court therefore does not have the jurisdiction to review its own decision. In *John Kagunda Kariuki v Republic* (2019) eKLR, Ngugi J. (as he then was) held that: -
- “In the present case, the Applicant’s appeal has already been heard by the High Court. He cannot return to the High Court for a review of the sentence imposed. He is at liberty to make an argument for reduced sentence at the Court of Appeal”.
10. In the case of *Daniel Otieno Oracha v Republic* (2019) eKLR, the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and Aburili J. held that:-
- “ 14. The law abhors that practice of a judge sitting to review a judgment or decision of another judge of concurrent jurisdiction. Reduction of sentence could only



be considered by the Court of Appeal or if this court was sitting on appeal of a judgment of the subordinate court or if the petitioner was seeking for resentence after exhausting appeal mechanisms and not otherwise.....

16. The judgment of Abida Ali-Aroni J made in accordance with the law has not been challenged. This court cannot sit on appeal of its own judgment or of court of concurrent competent jurisdiction when the Petitioner had an opportunity to ventilate his grievance before the Court of Appeal even if it was to challenge sentence alone.
 17. Good governance demands that cases be handled procedurally in the right forum. This is because the rule of the thumb that superior courts cannot sit in review/appeal over decisions of their peers of equal and competent jurisdiction much less those courts higher than themselves and that matters falling under the exclusive jurisdiction of Supreme Court under Article 163(3) cannot be dealt with by the High Court.....”
11. I am further persuaded by Njunguna J. in *Lawrence Kariuki Njeru v Republic* (2021) eKLR, where she held that: -
- “ Further this court is bereft of jurisdiction to review the said judgment as doing so would be tantamount to sitting as an Appellate court on the judgment of the Learned Judge and which act the law abhors.
- The petitioner ought to ventilate the issue on the resentencing and/or excessive sentence at the Court of Appeal”
12. This court has already spoken in regard to the Applicant’s sentence that was imposed by the trial court. Any further recourse that the Applicant has with regard to his sentence lies in the Court of Appeal and not in this court.
 13. In the end, I find that this court has no jurisdiction to review its own Judgment and therefore the Petition herein lacks merit and the same is dismissed.
 14. Orders accordingly.

RULING DELIVERED, DATED AND SIGNED AT BOMET THIS 15TH DAY OF DECEMBER, 2023.

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R. LAGAT-KORIR

JUDGE

Ruling delivered in the absence of the Applicant and presence of Mr. Njeru for the State, and Siele (Court Assistant).

