



Tito v Republic (Through DPP) (Miscellaneous Criminal Application E179 of 2022) [2022] KEHC 16438 (KLR) (22 November 2022) (Ruling)

Neutral citation: [2022] KEHC 16438 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MOMBASA
MISCELLANEOUS CRIMINAL APPLICATION E179 OF 2022**

A. ONG'INJO, J

NOVEMBER 22, 2022

BETWEEN

DOUGLAS TITO APPLICANT

AND

REPUBLIC (THROUGH DPP) RESPONDENT

RULING

1. The applicant Douglas Tito was accused in Shanzu Senior Principal Magistrates Court CR case no 728 of 2015 with the offence of defilement contrary to section 8(1) as read with section 8(2) of the *Sexual Offences Act* no 3 of 2006.
2. Particulars were that on June 13, 2015 at [particulars withheld] area in [particulars withheld] Sub-County within Mombasa County the applicant intentionally and unlawfully caused his penis to touch the vagina of SKK a girl aged 8 years.
3. The trial Magistrate Hon A Ndungu SRM found him guilty and he was convicted and sentenced to serve life imprisonment on September 28, 2017. The applicant lodged and appeal against conviction & sentence in Mombasa HC CR A no 70 of 2018 and the conviction was upheld and taking into consideration the Koita Injiri case reviewed the sentence of life imprisonment imposed and substituted it with a sentence of 30 years in prison from the date the applicant was sentenced.
4. In the review the judge put into consideration that the applicant committed a heinous crime by preying on his estranged wife's younger sister who was only 8 years old after her mother allowed her to accompany the applicant and his sons, to his house at Bamburi. Such an act is an abomination which makes the appellant an offender who deserves a deterrent sentence for a long time behind the walls and gates of prison to keep young girls safe from his hideous ways.
5. This appeal was determined on May 12, 2020. The applicant has now come to this court seeking that his sentence be adjusted accordingly in consideration of the mitigating factors he has given in



his application namely:-He has lived well with the fellow inmatesThat the prisons authority have commended him in terms of character and Jared Koita Injiri v Republic [2019] eKLR – the Court of Appeal stated as follows:-

“...in this case the appellant was sentenced to life Imprisonment on the basis of the mandatory sentence stipulated by section 8(1) of the Sexual Offences Act and if the reasoning in the supreme court case was applied to this provision, it too should be considered in constitutional on the same basis.

The appellant was provided an opportunity to mitigate in the trial court where it was stated that he was a 1st offender. He pleaded for leniency. However, it cannot be overlooked that the appellant committed a heinous crime & occasioned severe trauma & suffering to a young girl.

His actions have demonstrated that around him, young and vulnerable children like the complainant could be in jeopardy”

6. Concerning the application to adjust sentence in accordance with Muruatetu, Phillip Mueke and Jared Koita Injiri holdings this court is of the view that the review was already done in the appeal lodged by the applicant and is therefore already adjudicated upon. That application cannot therefore be sustained.
7. This court has gone through the proceedings in trial court and established that although applicants bond terms were renewed from Kshs 300,000/= to Kshs 100,000/= with a surety he was not able to secure his release on bond. It is then follows that his trial took place while he was in custody & is therefore entitled to benefit under section 333(2) of the Criminal Procedure Code. The 30 years sentence should therefore run from June 22, 2015.
8. Orders accordingly.

RULING DATED, SIGNED AND DELIVERED AT MOMBASA THIS 22ND DAY OF NOVEMBER 2022 BY MICROSOFT TEAMS/OPEN COURT

HON. LADY JUSTICE A. ONG’INJO

JUDGE

In the presence of:-

Ogwel – Court Asst.

Ms. Kambaga for State/Respondent

Applicant – Present in person online from Shimo La Tewa.

Hon. Lady Justice A. Ongi’injo J

22/11/2022

