



**Omar v Republic (Criminal Petition E014 of 2022)
[2022] KEHC 16763 (KLR) (23 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16763 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT ELDORET
CRIMINAL PETITION E014 OF 2022
RN NYAKUNDI, J
DECEMBER 23, 2022**

BETWEEN

RASHID WANYAMA OMAR PETITIONER

AND

REPUBLIC RESPONDENT

RULING

1. The applicant approached this court vide a Notice of Motion filed on August 17, 2022 seeking the following orders;
 1. Spent
 2. That the Petitioner be granted a noncustodial sentence in accordance to section 39(2) of the SOA No 3 of 2006.
 3. That the Petitioners' health condition is further worsen due to hard time in prison in respect to his ageing and underlying health conditions.
2. The minimum mandatory sentence against the Petitioner was unjust and unfair based on the High Court decision by Hon. Justice GV Odunga vide Petition No E017/2021 at Machakos High Court on May 17, 2022.
3. The application is premised on the grounds set out therein and the contents of the supporting affidavit to the application.
4. The Petitioner was convicted of the offence of defilement contrary to section 8(1)(3) of the SOA in Count I and Sexual Assault contrary to section 5(1)(a)(i) and (2) of the SOA in count II. He was sentenced to serve 20 year's imprisonment for count one and 10 years' imprisonment for count two. The High court reduced the Petitioners' sentences for both counts to 10 years to run concurrently on December 9, 2021.



5. I have perused the judgment of December 9, 2021 where the court applied the findings of the Supreme Court in Muruatetu 1 and reached the conclusion that the Petitioner was entitled to a review of the sentence based on the circumstances of the case and any mitigating factors. The upshot of the foregoing is that there is no further reason to reduce the Petitioner's sentence as the same was already determined.
6. Whereas I note the jurisprudence arising from *Mainigi & 5 others v Director of Public Prosecutions & another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR), the same requires that the court interrogate the mitigating circumstances around the conviction and sentencing of the Petitioner, which was already done by this court as per the judgment reducing his sentence to 10 years.
7. In the premises, the petition is unmerited and is hereby dismissed.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA EMAIL ELDORET THIS 23TH DAY OF DECEMBER, 2022

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R. NYAKUNDI

JUDGE

(mark.mugun@gmail.com)

