



REPUBLIC OF KENYA



KENYA LAW
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**Lokitol v Republic (Revision Case E013 of 2021)
[2022] KEHC 16991 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEHC 16991 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAIVASHA
REVISION CASE E013 OF 2021
GWN MACHARIA, J
DECEMBER 20, 2022**

BETWEEN

JOSEPH LOKITOL APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Joseph Lokitol, was charged, tried and convicted for the offence of rape contrary to Section 3 (1) (a) (b) (3) of the [Sexual Offences Act](#) in Naivasha Chief Magistrates Court Criminal Case No. 15 of 2017. He was thereafter sentenced to serve twelve years imprisonment on June 25, 2017. Aggrieved by both his conviction and sentence, he appealed to this court *vide* Naivasha HC Criminal Appeal No. 35 of 2017. The appeal was heard and dismissed by my brother Justice R. Mwongo.
2. The Applicant has now approached this court vide a document titled Memorandum of Sentence Review seeking for review of the sentence imposed by the trial court. The application is supported by the Applicant's self-sworn Affidavit in which he avers that he was a first offender. He is remorseful for the offence and is ready to reconcile with the complainant. Further, he avers that he comes from a poor background and was the sole breadwinner of his young family of three children who he believes are undergoing great difficulty due to his incarceration. He also states that in the three years that he has been in custody, he has been well rehabilitated as he has trained in biblical courses and acquired various skills such as shoe making and repair as well as poultry farming and intends to use the said skills in nation building if given a chance to go back to the society. He therefore urges for reduction of the twelve years' sentence or substitution of the same with a non-custodial sentence.
3. In her written submissions filed herein, learned State Counsel, Ms. Serling, for the Respondent opposed the application and submitted that the circumstances under which the offence was committed called for a stiff sentence. She also noted that no efforts have been made by the Appellant to reconcile with the victim's family.



4. When affirming the sentence imposed on the Applicant herein by the trial court on appeal, Justice Mwango held as follows:

“48. As for the sentence, I note that the trial magistrate properly considered the mitigation availed. She adequately explained why she imposed a stiffer sentence than the minimum sentence allowable. I agree with the Learned Magistrate’s reasoning and affirm the sentence as meted.”

5. Noting the history of the Applicant’s case, it is my considered view that this court cannot review Mwango, J’s judgment as doing so would be tantamount to sitting on appeal against a court of concurrent jurisdiction. If the Applicant was not satisfied with the High Court’s decision on appeal, he should have escalated the same to the Court of Appeal instead of coming to the same court for review of sentence.

6. I am persuaded by the case of *Daniel Otieno Oracha v Republic* [2019] eKLR where the Petitioner had applied for review of a sentence imposed by a court of concurrent jurisdiction and the Court observed 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.....”

7. Further, in *John Kagunda Kariuki v Republic* [2019] eKLR, Ngugi J. held as follows.

“..persons whose appeals have already been heard by the High Court are not entitled to file fresh applications for re-sentencing in accordance with the new decisional law. To reach a different conclusion would lead to an ungovernable situation where all previously sentenced prisoners would seek review of their sentences.”

8. Consequently, the Applicant’s application lacks merit and is hereby dismissed. It is so ordered.

DATED AND DELIVERED AT NAIVASHA THIS 20TH DAY OF DECEMBER, 2022.

G.W. NGENYE-MACHARIA

JUDGE

In the presence of :



Applicant in person..

Mr.Michuki for the Respondent.

