



**Rumba v Director of Public Prosecution (Petition E025 of 2021)  
[2021] KEHC 13709 (KLR) (30 July 2021) (Ruling)**

Neutral citation: [2021] KEHC 13709 (KLR)

**REPUBLIC OF KENYA**

**IN THE HIGH COURT AT MALINDI**

**PETITION E025 OF 2021**

**RN NYAKUNDI, J**

**JULY 30, 2021**

**IN THE MATTER OF REVIEW OF SENTENCE IN THE MATTER OF ARTICLE 22 (1),  
23(1), 25(C), 27, 48, 50 (2) (P), 165 (3), 258 (1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTIONS 165 (3) AND 258 (1), 259 (1) OF THE CONSTITUTION**

**AND**

**IN THE MATTER OF SECTION 8 (1) AS READ WITH  
8 (4) OF THE SEXUAL OFFENCES ACT NO. 3 OF 2006**

**BETWEEN**

**MWATELA CHUPHI RUMBA ..... PETITIONER**

**AND**

**DIRECTOR OF PUBLIC PROSECUTION ..... RESPONDENT**

**RULING**

1. The Petitioner filed a Petition dated 31.3.2021 pursuant to the original proceedings in Criminal Case NO. 541 of 2014 at Mombasa. He was sentenced to 15 years imprisonment for the offence of defilement contrary to 8 (1) as read with section 8 (4) of the *Sexual Offences Act*. Being aggrieved with the decision on both conviction and sentence he preferred an appeal to the High Court before the session judge her Ladyship A.Ongeri who considered the matter wholly and ruled that the appeal lacks merit with regard to the issues raised in the Memorandum of Appeal. The gist of the Petition is for this court to revisit the issue on review of sentence.



## Determination

2. Limited jurisdiction has been granted to the High Court in terms of Article 50 (2) (P), & (Q) (6) (a) & (b) of *the Constitution* in pertinent circumstances to render a decision on review of sentence which has been imposed against a convicted petitioner. In contrast to the traditional discretion to pass sentence after a finding of facts on review, there must be compelling and exceptional circumstances to tilt the scale of the order. It should be recalled that since the advent of the dicta by the Supreme Court in Francis K. Muratetu V R [2017]eKLR mandatory sentences have faced constitutional challenges on the basis of which many convicts in this respect moved various Courts to review the imposed sentences.
3. Apparently each of the convicts entertains this feeling that mandatory sentences are unconstitutional and gross violations of their fundamental rights. I am of the view that the Court should approach the task cautiously since the legislature has already provided for the prescribed sentences for the offences in question, unless there are or can be seen from the record truly new and compelling reasons likely to produce different results of the original sentence.
4. In the case of Fatuma Hassan Salo V R [2009]eKLR the court held that;-

“In sentencing the offender the guiding factors should be the evidence showed legal principles and all other relevant factors when it comes to apportioning a definitive sentence for the offence.”
5. The Court is also required to consider both mitigation and aggravating factors before arriving at a decision. Therefore the circumstances in which the crime was committed are undoubtedly within the purview of the trial court and also consideration of the merits of an appeal. There are therefore two approaches between the sentencing verdict and the trial court and a more structured one on review. Evidently, under review the court operates within narrower bounds to inform the new circumstances to occasion interference with the order on sentence. It is clear that at the trial, the dimension to the extent of age, seriousness of the offence, personal circumstances, previous convictions and other considered factors have been reflected in the sentence imposed against the petitioner. The justification for interference should be on proof of substantial and compelling circumstances, or material. The prior judgment of conviction and sentence are conclusive upon all questions of fact or of law distinctly put in issue and directly determined upon the trial of the former indictment.
6. In the instant petition after evaluation and examination of the petition I find no features on compelling and extraordinary circumstances to warrant this Court to vary or interfere with the 15 years imprisonment. This means that the Petition lacks merit. I declare and affirm the verdict on sentence as imposed by the trial court and further crystalized by the High Court.

**DATED, SIGNED AND DELIVERED AT MALINDI THIS 30<sup>TH</sup> DAY OF JULY, 2021**

.....

**R. NYAKUNDI**

**JUDGE**

In the presence of:

1. Mwatela Chuphi Rumba – Petitioner
2. Mr Mwangi for the state

