



Bashora alias Nyati v Republic (Miscellaneous Criminal Application E007 of 2024) [2025] KEHC 330 (KLR) (17 January 2025) (Ruling)

Neutral citation: [2025] KEHC 330 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
MISCELLANEOUS CRIMINAL APPLICATION E007 OF 2024**

**M THANDE, J
JANUARY 17, 2025**

BETWEEN

PAUL BAJILA BASHORA ALIAS NYATI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was convicted of the offence of defilement incest contrary to Section 20(1) of the *Sexual Offences Act* in Malindi Criminal Case No. 3 of 2017 sentenced to 20 years imprisonment. He appealed both the conviction and sentence in Malindi High Court Criminal Appeal No. 30 of 20195, which appeal was dismissed on 17.1.2020. Not being satisfied, the Applicant moved to the Court of Appeal at Mombasa *vide Criminal Appeal No. 10 of 2020*. This latter appeal was dismissed by a judgment dated 23.6.23. The Applicant has now returned to this Court by an Application filed on 22.1.24, seeking that the period spent in remand pending trial, be considered and that the sentence be from the date of his arrest.
2. In support of his Application, the Applicant relied on the case of *Maingi & 5 others v Director of Public Prosecutions & another (Petition E017 of 2021)* [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment) in which Odunga, J. (as he then was) found that the mandatory sentences prescribed in the SOA which affords no discretion to the trial court fall foul of Article 28 of *the Constitution*. The learned Judge went on to state that courts are at liberty to impose sentences prescribed thereunder so long as the same are not deemed to be the mandatory minimum prescribed sentences. The Applicant further relied on the case of *Al Ali Abdalla Mwanza v Republic* [2018] eKLR where the Court of Appeal considered the import of the 40-year sentence imposed on the appellant therein and found that the same would go beyond the life expectancy of 67 years (according to W.H.O.) and was manifestly excessive.
3. The Respondent opted not to file a response.



4. It is trite that this Court may only exercise that jurisdiction which has been conferred upon it by the Constitution, statute or both. In the case of Samuel Kamau Macharia & another v Kenya Commercial Bank Limited & 2 others [2012] eKLR the Supreme Court succinctly stated:

A Court's jurisdiction flows from either the Constitution or legislation or both. Thus, a Court of law can only exercise jurisdiction as conferred by the constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law.

5. This Court derives its jurisdiction principally from Article 165(3) of the Constitution which confers upon this Court unlimited original jurisdiction in criminal and civil matters, the provision clearly delineates and demarcates what the Court can and cannot do. The jurisdiction of this Court includes supervisory powers as provided for under Article 165(6) as follows:

The High Court has supervisory jurisdiction over the subordinate courts and over any person, body or authority exercising a judicial or quasi-judicial function, but not over a superior court.

6. Following his conviction, the applicant appealed to this Court which heard and determined the same. What he now seeks is that this Court reviews its own decision a jurisdiction it does not have. In this regard, I associate with the holding in John Kagunda Kariuki v Republic [2019] eKLR, where Ngugi, J, (as he then was) stated:

10. 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.

7. The matter of the Applicant's sentencing was determined by this Court, albeit differently constituted. The Applicant has invited this Court to rehear the same. This Court lacks jurisdiction to supervise a superior court and cannot therefore entertain the matter, leave alone grant orders herein to reopen or review the decision of its peer of equal and competent jurisdiction.

8. In light of the foregoing, the Court finds that the Application herein is incompetent and the same is hereby struck out.

DATED SIGNED AND DELIVERED AT MALINDI THIS 17TH DAY OF JANUARY 2025

M. THANDE

JUDGE

