



**Ipata v Republic (Miscellaneous Application E036 of 2024 & Criminal Appeal 121 of 2024 (Consolidated)) [2025] KEHC 1436 (KLR) (7 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1436 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT BUNGOMA  
MISCELLANEOUS APPLICATION E036 OF 2024 &  
CRIMINAL APPEAL 121 OF 2024 (CONSOLIDATED)**

**REA OUGO, J**

**FEBRUARY 7, 2025**

**ORIGINATING FROM ORIGINAL CR. CASE NO. 608 OF 2014  
AT CM'S COURT BUNGOMA.**

**IN THE MATTER OF RE- SENTENCING HEARING UNDER  
ARTICLE 19,20,21,25,27,28,29,50,51,159, AND 165 OF THE  
CONSTITUTION OF KENYA**

**AND**

**IN THE MATTER OF SECTION 33(2) OF THE CRIMINAL  
PROCEDURE CODE**

**BETWEEN**

**TITO OMACHAR IPATA ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Tito Omachar Ipata the applicant seeks a re-hearing of the sentence imposed against him. He claims that the Court has the jurisdiction power to hear and determine the life sentence imposed on the petitioner.
2. In his affidavit in support of the motion he avers as follows; he was charged convicted and sentenced to serve a sentence for the offence of defilement contrary to section 8 (1) A.R.W8(2) of the [sexual offences Act 3 of 2006](#) by the CM' Court at Bungoma. He appealed to the High Court at Bungoma [vide Cr. Appeal No. 121 of 2014](#) where the appeal was heard and dismissed by Hon. Justice Roselyne Wendoh.



That he appealed to the Court of Appeal at Kisumu where he was not informed of the appeal number and when it shall be heard. He is over 90 years old, and sickly and he has decided to seek justice at this Honourable court. That the life sentence that he serving is harsh, excessive, and degrading and that the Court of Appeal has since declared it to be unconstitutional.

3. The applicant is seeking re-sentencing. He is currently serving a life sentence as per his affidavit. I have considered the submissions by the respondent. The applicant is 90 years old and is said to be sickly. The High Court is a court of record. From the time this matter was filed and brought before this court, this court has sought the judgment of the Lower Court and the High Court and none of these judgments are available. The Supreme Court of Kenya in the case of Kenya Commercial Bank Limited v Muiri Coffee Estate Limited & another [2016] eKLR in considering an appeal from the decision of the Court of Appeal of Benjoh Amalgamated Limited & another v Kenya Commercial Bank Limited [2014] eKLR held as follows on the essence of court records in the following terms:

“(48) The importance of the record of a Court, particularly for a Court of record, such as the High Court, cannot be gainsaid. We agree with learned counsel for respondent, Mr. Muita, that the record of a Court of record is a fundamental reference point in the administration of justice”.

4. The High Court is a court of record. In the absence of the 2 judgments, I am unable to deal with the Applicant’s application. The Applicant’s only recourse is in the Court of Appeal. The application is dismissed. This file is closed.

**DATED, SIGNED AND DELIVERED AT BUNGOMA THIS 7<sup>TH</sup> DAY OF FEBRUARY 2025.**

**R.E. OUGO**

**JUDGE**

In the presence of:

Tito Amachar Ipata - Applicant

Miss Matere - Respondent/ ODDP

Wilkister - C/A

