



**Musee v Republic (Miscellaneous Criminal Application E042 of 2024)
[2025] KEHC 1775 (KLR) (19 February 2025) (Ruling)**

Neutral citation: [2025] KEHC 1775 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KITUI
MISCELLANEOUS CRIMINAL APPLICATION E042 OF 2024**

LW GITARI, J

FEBRUARY 19, 2025

BETWEEN

CHRIS MUSYOKI MUSEE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant has filed a Notice of Motion under Articles 22, 23 & 165 (7) of *the Constitution* of Kenya 2010 and Section 333 (2) of the *Criminal Procedure Code*. The main prayer is that this court be pleased to consider the time spent in remand awaiting trial and reduce the sentence imposed on him by that period. He also prays that the remaining sentence be served on probation.
2. The application is based on the grounds that he was convicted on a charge of incest contrary to Section 20 of the *Sexual Offences Act* and was ordered to serve a sentence of life imprisonment. His appeal to the High Court vide Criminal Appeal No. 61 of 2013 was dismissed on 17/09/2014. He lodged a second Appeal in The Court of Appeal in Criminal Appeal No. 140 of 2015 was also dismissed on 19/06/2020.
3. He relies on the case of Edwin Wachira & 9 Others. Petition No. 97/2021 and prays that he be allowed to mitigate and the court to order resentencing. He also relies on Constitutional Petition No. E017/2021, *Philip Mueke Maingi & 5 Others v Republic* [2022] eKLR. He has urged the court to consider that the time spent in prison is enough for rehabilitation.
4. I have considered the Notice of Motion. The applicant relies on the case of Edwin Wachira & Others v Republic where the High Court declared the mandatory minimum sentence under Section 8(2) (3) (4), 11(1), 20 (1) and 3(3) of the *Sexual Offences Act* as unconstitutional as they deprive the court the discretion to determine the appropriate punishment taking into account the individual



circumstances of each case, that they offend the notion of fair trial contemplated under Article 50(1) of *the Constitution* of Kenya 2010.

5. This decision has since been overruled by the Supreme Court in the case of *Republic v Joshua Gichuki Mwangi Petition No. 181 of 2023* where it overturned a Court of Appeal Judgment granting Judges and Magistrates power to hand sex offenders lesser sentences than those prescribed in the *Sexual Offences Act* and affirmed, the mandatory sentences provided in the *Sexual Offences Act*. The Supreme Court held that mandatory minimum sentences do not deprive Judicial Officers of the power to exercise Judicial discretion.
6. The Supreme Court reiterated that its decision in Muruatetu did not invalidate the mandatory sentences in the *Penal Code*, *Sexual Offences Act* or any other statute. The decision binds this court by dint of Article 163(7) which provides that, “All courts other than the Supreme Court, are bound by the decisions of the Supreme Court”. The Supreme Court also re-affirmed that it is parliament and not the Judiciary that set the parameters of sentencing for each crime in the statute. The applicant had appealed to the Court of Appeal according to what he has stated. The Court of Appeal declined to interfere with sentence based on the Supreme Court Muruatetu Guidelines where the Supreme Court held that the decision in *Karioko Muruatetu & Another v Republic* [2015] eKLR only applies in case of murder under Section 203 as read with Section 204 of the *Penal Code* and does not apply in the *Sexual Offences Act*.
7. This court lacks jurisdiction to entertain the application as the Court made a decision which binds this Court. I also note that the applicant had filed an appeal in the High Court at Garissa, Criminal Appeal No. 61 of 2013 seeking a review of the sentence under Article 159(2)(c) of *the Constitution* which was dismissed.
8. I find that the applicant has exhausted all channels of appeal on sentence. The record shows that the applicant was released on bond the same day he was arraigned in court for plea. Section 333(2) of the *Criminal Procedure Code* does not apply as he did not spend time in custody awaiting trial. The sentence imposed was lawful and remains lawful. This application is without merits and is not properly before this court.
9. The applicant has exhausted all avenues available to him for review and appeal on the sentence. The application is dismissed.

DATED, SIGNED AND DELIVERED AT KITUI THIS 19TH DAY OF FEBRUARY 2025

HON. LADY JUSTICE L. GITARI

JUDGE

