



REPUBLIC OF KENYA



**Chombo v Republic (Criminal Revision E054 of 2023)
[2024] KEHC 1063 (KLR) (2 February 2024) (Ruling)**

Neutral citation: [2024] KEHC 1063 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MALINDI
CRIMINAL REVISION E054 OF 2023**

M THANDE, J

FEBRUARY 2, 2024

BETWEEN

MATHIAS MUKUBA CHOMBO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. By an Application filed on 13.4.23, the Applicant seeks review of the sentence imposed upon him. He also seeks that the Court takes into account the period spent in custody both pre-conviction and post-conviction. The Applicant stated that he was charged and convicted of the offence of rape contrary to Section 10 of the *Sexual Offences Act* in Mariakani Criminal Case No. 399 of 2017. He was sentenced to 10 years imprisonment as stipulated in law. Being aggrieved with the conviction and sentence, the Applicant filed HCCR Appeal No. 18 of 2018 which was dismissed on 23.10.19 and both the conviction and sentence were affirmed.
2. The Applicant has returned to this Court seeking review of the sentence. He contends that the penalty for the offence is couched in mandatory terms and is therefore repugnant to the discretion in sentencing. Further that a person convicted of the offence is deprived of the right to have his mitigation considered. He contends that many subordinate courts have considered such sentences to be mandatory in nature, thereby stripping them of discretion in sentencing offenders charged under such laws. He urged the Court to review his sentence.
3. The Respondent opposed the Application vide a replying affidavit sworn on 12.1.24 by Joseph Mwangi, prosecution counsel. It was contended that instead of filing an appeal in the Court of Appeal against the decision of this Court, the Applicant seeks to circumvent the process by filing this Application. There exists no basis for this Court to review the Applicant's sentence as the law does not allow the same. Further, that litigation must come to an end.



4. Under Article 165(3) of the *Constitution*, this Court has unlimited original jurisdiction in criminal and civil matters. The provision however clearly delineates and demarcates what the Court can and cannot do. By dint of Article 165(6) however, this Court cannot supervise superior courts. It provides:

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.

5. The circumstances herein are that the Applicant unsuccessfully appealed his conviction and sentence in this Court. What he now seeks is that this Court reviews its own decision, a jurisdiction that 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.

6. The Applicant's appeal was heard and determined by this Court, which declined to interfere with the sentence imposed and affirmed the same. By dint of Article 165(6) of the *Constitution*, this Court lacks jurisdiction to entertain the Application herein. Accordingly, the Court finds that the Application filed on 13.4.23 lacks merit and the same is hereby dismissed.

DATED AND DELIVERED VIA MS TEAMS THIS 2ND DAY OF FEBRUARY 2024

M. THANDE

JUDGE

