



**Argut v Republic (Criminal Miscellaneous Application
E043 of 2023) [2024] KEHC 2371 (KLR) (6 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2371 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL MISCELLANEOUS APPLICATION E043 OF 2023**

RB NGETICH, J

MARCH 6, 2024

BETWEEN

MICHAEL KIPNGETICH ARGUT APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant herein was charged in Kabarnet Principal Magistrates Court Criminal case No. 383 of 2010 with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [Sexual Offences Act](#) the particulars of which are that the accused on the 25th day of April, 2010 at about 7:00P.M at Kapluk Location Barwesa Division within Baringo County of the Rift valley province, he intentionally and unlawfully did caused his penis to penetrate the vagina of Shyreen Jepwogen a child aged 3(three) years old.
2. The Appellant faced an alternative charge of indecent Act with a child contrary to section 11(1) of the [Sexual Offences Act](#) the particulars of which are that the accused on the 25th day of April, 2010 at about 7:00P.M at Kapluk Location Barwesa Division within Baringo County of the Rift valley province, he intentionally and unlawfully did caused his penis to come into contact with the vagina of Shyreen Jebwogen a girl aged 3 years old contrary to section 11(1) of the [Sexual offences Act](#) No. 3 of 2006.
3. The Applicant filed an application for sentence review vide Kabarnet H.C Misc. Criminal Application No. 17 of 2020. This matter was handled by this court on the 2nd of May, 2023. The applicant sought to have his sentenced reviewed stating that he has been in prison having been charged with the offence of defilement and sentenced to life imprisonment.
4. He sought to have determinate sentence. The prosecution on the said date informed the court that the applicant had previously filed an appeal No. 69 of 2011 in Eldoret Court where the conviction and sentenced was upheld. That this court does not have jurisdiction to entertain the application for



re-sentence by virtue of the fact that a concurrent jurisdiction had sat and determined appeal on the sentence and that this court cannot review a decision of another judge with same jurisdiction and the appellant has not exhausted appeal option. The applicant stated that he withdrew the application so that he can file an appeal to the Court of Appeal and the court proceeded to mark the matter as withdrawn.

5. The Applicant has now approached this court vide an application filed on the 29th November, 2023 seeking for sentence review in his case. The applicant is seeking for a lenient determinate sentence under Article 50(2)(p)(q) of the Constitution of Kenya considering the exceptional circumstances of the case. That the Honourable court be pleased to invoke the provisions of Section 333(2) so that the period spent in remand be factored in the sentence.
6. The applicant states that the life sentence meted by the trial court is harsh and excessive considering the circumstances of the case and the recent decision of the court of appeal in *Kitsao Vs Republic Malindi Criminal Appeal No. 12 of 2020* and this Honourable court has jurisdiction to hear and determine this matter pursuant to the decision in the above case. That he has been in custody for 13 years where he has learnt important lessons from his incarceration.
7. The applicant states that his first appeal to the High court was dismissed in its entirety vide Eldoret HCCRA No. 89 of 2010 and he has no pending matter in court thus this application. He states that he is remorseful and repentant for what happened thus beg for the leniency of the court to substitute the life sentence with a determinate term to facilitate social integration.
8. The prosecution opposed the application stating that the High court had already dealt with this matter and no longer has jurisdiction to deal with it. They submit that the Applicant should move to the court of appeal for revision in view of the Court of Appeal decision on life sentence.

Determination

9. It is not disputed that the Applicant had his appeal heard and determined by this Court. The Applicant having appealed to this Court and his appeal determined did not pursue further appeal to the Court of Appeal. The issue is whether this Court has jurisdiction to review its own order and sentence. The Supreme Court considered the issue of review of judgements and orders in *Fredrick Otieno Outa v Jared Odoyo Okello & 3 others* [2017] eKLR and held that:

“...we hold that as a general rule, the Supreme Court has no jurisdiction to sit on appeal over its own decisions, nor to review its decisions, other than in the manner already stated in paragraph (90) above. However, in exercise of its inherent powers, this Court may, upon application by a party, or on its own motion, review, any of its Judgments, Rulings or Orders, in exceptional circumstances, so as to meet the ends of justice. Such circumstances shall be limited to situations where:

- i. the Judgment, Ruling, or Order, is obtained, by fraud or deceit;
- ii. the Judgment, Ruling, or Order, is a nullity, such as, when the Court itself was not competent;
- iii. the Court was misled into giving Judgment, Ruling or Order, under a mistaken belief that the parties had consented thereto;
- iv. the Judgment or Ruling, was rendered, on the basis of a repealed law, or as a result of, a deliberately concealed statutory provision.”



10. From the foregoing, in order for a party to successfully move a court to review its own decision or that of a court with coordinate jurisdiction, the party is required to meet certain conditions as established in the just cited case. The applicant has cited the Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso v Republic* where life sentence was declared unconstitutional. Looking at (IV) authority, a court which made decision or order in a matter previously can review on basis of repealed law. In view of Malindi decision, there is change of jurisprudence in respect to sentence of life imprisonment. From the foregoing, this court has jurisdiction to review life sentence imposed against the applicant. Considering the age of the child herein being 3 years old, I hereby set aside the sentence of life imprisonment and impose sentence of 30 years imprisonment.

Final Orders: -

11.

1. Sentence of life imprisonment is hereby set aside.
2. The applicant to serve 30 years imprisonment.
3. Period served in remand to be computed in the sentence.

RULING DELIVERED, DATED AND SIGNED IN OPEN COURT AT KABARNET THIS 6TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Kibet, Court Assistant.

