



**Hamed v Republic (Miscellaneous Criminal Application  
E099 of 2023) [2024] KEHC 2626 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2626 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT MOMBASA  
MISCELLANEOUS CRIMINAL APPLICATION E099 OF 2023**

**A. ONG'INJO, J**

**MARCH 8, 2024**

**BETWEEN**

**ZACHARIA MOHAMED HAMED ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

**Application**

1. The applicant Abdul Akim Said was charged in Shanzu Senior Resident Magistrate's Court Criminal Case No. 685 of 2014 with the offence of attempted defilement contrary to Section 9 (1) (2) of the [Sexual Offences Act](#) No. 3 of 2006
2. The trial court found the applicant guilty of the offence of attempted defilement, convicted him and sentenced him to serve 20 years imprisonment for two counts.
3. The applicant being dissatisfied with the conviction and sentence appealed in the High Court of Kenya at Mombasa Criminal Appeal No. 69 of 2017 but the same was withdrawn to pursue the sentence review herein.
4. *Vide* Notice of Motion Application filed on 20<sup>th</sup> July 2023, the Applicant now seeks for review of the mandatory 20 years imprisonment sentence in consideration of the mitigating factors that he has indicated in his application namely: -
  - i. That the applicant did not have any criminal record when being sentenced.
  - ii. That the applicant was aged 58 years and showed remorse.
  - iii. That the applicant has been in custody for a period of over 9 years with good reputation.



5. The applicant argued that Mativo, J. (as he then was) in Constitutional Petition No. 97 of 2021, *Edwin Wachira & Others v Republic* declared the mandatory sentences for sexual offenders unconstitutional. That additionally, Odunga, J. (as he then was) in Constitutional Petition No. E017 of 2021, *Philip Mueke Maingi and Others v DPP* declared the mandatory minimum sentences for sexual offenders unconstitutional.
6. The trial court file, Shanzu Senior Principal Magistrate's Court Criminal Case No. 685 of 2014, could not be traced for perusal by this court. However, the Sentence Review Report prepared by Abeid M. Abeid, the Senior Probation Officer Kisauni on 15<sup>th</sup> August 2023, was filed herein on 22<sup>nd</sup> February 2024. This court has established that the applicant was sentenced on 16<sup>th</sup> October 2015. He has been in custody for 8 years 5 months and after remission, he has approximately 5 years left to serve.
7. In consideration of the applicant's application and recommendation by the probation officer, this court hereby orders that the applicant's sentence shall be substituted with 2 years in custody and 3 years' probation from today's date.

**DATED, SIGNED AND DELIVERED IN OPEN COURT/ONLINE THROUGH MS TEAMS,  
THIS 8<sup>TH</sup> DAY OF MARCH 2024.**

**HON. LADY JUSTICE A. ONG'INJO**

**JUDGE**

**In the presence of: -**

Etropia- Court Assistant

Mr. Ngiri for the Respondent

Applicant present in person

