



**Kimosop v Republic (Criminal Petition 2 of 2023)  
[2024] KEHC 2422 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2422 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT ITEN  
CRIMINAL PETITION 2 OF 2023  
JRA WANANDA, J  
MARCH 8, 2024**

**BETWEEN**

**HILLARY KIPCHUMBA KIMOSOP ..... PETITIONER**

**AND**

**REPUBLIC ..... RESPONDENT**

*(Eldoret High Court Criminal Appeal No. 48 of 2018 against both conviction and sentence)*

**RULING**

1. What is before this Court is the Petitioner's undated Notice of Motion filed on 17/03/2023 seeking that the Court resents him. The Applicant was charged in Iten Magistrates Court Criminal Case No. 30 of 2017 with the offence of Gang Rape Contrary to Section 10 of the *Sexual Offences Act*. The trial Court convicted and sentenced him to 15 years' imprisonment. Aggrieved with the decision, he appealed *vide* Eldoret High Court Criminal Appeal No. 48 of 2018 against both conviction and sentence. The Appeal was dismissed on 11/06/2019 by Majanja J.
2. The Petitioner has attached a copy of the said Judgment of the High Court.
3. The present Application is expressed to be brought under Sections 362, 364(1) and 365 of the *Criminal Procedure Code* and Articles 27(1), (2), (4), 28, 22(1), 25(c), 50(1), (2) and 51(1), (2) of the *Constitution* of Kenya. The Petitioner seeks resentencing on the grounds that he is a first offender, he is remorseful and is reformed.
4. Although I gave the parties liberty to file written Submissions, only the Petitioner filed such submissions. The Respondent did not file any Submissions.
5. In his Submissions, the Petitioner reiterated the contents of his Application and the grounds on the face thereof. He urged the Court to be lenient and reduce his sentence and further, that he has been in custody since 2017 and that the incarceration has humbled him.



6. In my view, the issue that arises for determination is “whether the Court should interfere with the sentence”.
7. In answering the said issue, I reiterate that the Petitioner appealed to the High Court against the decision of the Magistrates Court, both on conviction and sentence. As aforesaid, the Appeal was dismissed. The Petitioner has returned to this same Court which has already dismissed his Appeal, asking for the same sentence imposed by the Magistrates Court to be reduced. The Petitioner’s recourse is to appeal at the Court of Appeal, not come back to this same High Court. This Court cannot sit on appeal on a decision of its own.
8. I therefore find that this Court, having already pronounce itself on both conviction and sentence, is functus officio and bereft of the jurisdiction to again review the sentence it had already dealt with in Eldoret High Court Criminal Appeal No. 49 of 2018.
9. I find persuasion in the case of *Joseph Maburu alias Ayub v Republic* [2019] eKLR where Kiare Waweru J held as follows:

“Sentencing is a judicial exercise. Once a judge or a judicial officer has pronounced a sentence, he/she becomes functus officio. If the sentence is illegal or inappropriate the only court which can address it is the appellate one. *Black’s Law Dictionary* Tenth (10<sup>th</sup>) Edition describes defines sentence as:

“The judgement that a court formally pronounces after finding a criminal defendant guilty; the punishment imposed on a criminal wrongdoer.”

Remitting a matter to the trial court which had become functus officio after sentencing flies in the face of the doctrine of functus officio. It amounts to asking the trial court to clothe itself with the jurisdiction of an appellate court. This is an illegality.”

10. In the premises, the Application is dismissed.

**DELIVERED, DATED AND SIGNED AT ELDORET THIS 8<sup>TH</sup> DAY OF MARCH 2024**

.....

**WANANDA J.R. ANURO**

**JUDGE**

