



**Kandie v Republic (Criminal Revision E003 of 2024)
[2024] KEHC 2372 (KLR) (5 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 2372 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KABARNET
CRIMINAL REVISION E003 OF 2024
RB NGETICH, J
MARCH 5, 2024**

BETWEEN

KIPROP KANDIE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

Background

1. The Applicant herein was charged in Kabarnet Principal Magistrates Court Criminal case No. 775 of 2015 with the offence of defilement contrary to section 8(1) as read with section 8(2) of the [sexual offences Act](#). The particulars are that the on the 10th day of August, 2015 at 1330Hrs in Baringo North Sub-county within Baringo County the accused unlawfully and intentionally caused his penis to penetrate the vagina of AC a girl aged 4 ½ years in contravention of the [Act](#).
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 are that the accused on the 10th day of September, 2015 at around 2330Hrs in Baringo North Sub- County within Baringo County intentionally and unlawfully caused his penis to touch the vagina of AC a girl aged 4 ½ years in contravention of the Act.
3. The accused pleaded not guilty to the charges and the matter proceeded for full trial and by judgement delivered on the 2nd June, 2016, the court found the accused guilty as charged for the offence of defilement contrary to section 8(1)(2) of the [Sexual Offences Act](#) No. 3 of 2006. He was convicted and sentenced to serve life imprisonment.
4. Dissatisfied with the decision of the trial court, the Applicant lodged an appeal to this court vide Kabarnet H.C Criminal Appeal No. 83 of 2017 which was heard and determined on the 3rd day of April,2019 where the court found no merit in the Appellant’s appeal and dismissed the same.



5. Still dissatisfied with the sentence of the High court, the convict has approached this court seeking sentence review arguing that this court has competent jurisdiction to hear and determine this application under Article 165(3)(b) of the Constitution of Kenya, 2010. That under 50 (2)(p)(q) of the Constitution of Kenya, an applicant has a right to benefit from the least severe sentence and to have his sentence reviewed.
6. He states that a sentence of life imprisonment contravenes section 216 and 389 of the Criminal Procedure Code. That under the provisions of the Constitution of Kenya 2010 and High Court practice and procedure Rules, this court has power to hear and determine infringement of fundamental rights and award remedies. He stated that his prayer is for re-sentence and he has been in prison for 9 years now.
7. The prosecution counsel Ms. Ratemo submitted orally that the applicant's appeal No. 83 of 2017 was dismissed by the High Court and she is aware that the court of appeal set precedence on life sentence but she maintains that this court do not have jurisdiction to set aside sentence by a court of concurrent jurisdiction and the law does not act retrospectively. That since he had filed appeal, he can move to the Court of Appeal for resentence.

Determination

8. The Applicant argues that this Court has jurisdiction to hear to determine his application for sentence review. The law on jurisdiction was stated by the Supreme Court in Samuel Kamau Macharia & another v Kenya Commercial Bank Ltd & 2 others, Application No. 2 of 2011 thus:

“ A court's jurisdiction flows from either the Constitution or legislation or both. Thus, a court can only exercise jurisdiction as conferred by the Constitution or other written law. It cannot arrogate to itself jurisdiction exceeding that which is conferred upon it by law...”

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 is seized with 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. I take note of the fact that after this court made determination on appeal filed by the applicant, there has been change of jurisprudence being in Malindi Court of Appeal Criminal Appeal No. 12 of 2021, *Julius Kitsao Manyeso Versus Republic*. And in view of change in jurisprudence, the applicant has a right to approach this court for review of sentence. I have considered probation officer's report and I am of the view that the applicant herein should benefit from change of jurisprudence declaring life sentence unconstitutional. The applicant therefore deserves determinate sentence. I have taken into consideration the age of the child who was the victim herein and impose 30 years imprisonment.
11. Final orders:-
1. Life imprisonment is hereby set aside.
 2. Applicant to serve 30 years imprisonment.
 3. period served in remand to be computed in sentence above.

RULING DELIVERED, DATED AND SIGNED VIRTUALLY AT KABARNET THIS 5TH DAY OF MARCH 2024.

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RACHEL NGETICH

JUDGE

In the presence of:

Applicant present.

Ms Ratemo for State.

Kibet – Court Assistant.

