



REPUBLIC OF KENYA



KENYA LAW
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**Mwangi v Republic (Criminal Revision E125 of 2023)
[2024] KEHC 3081 (KLR) (12 March 2024) (Ruling)**

Neutral citation: [2024] KEHC 3081 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MURANG'A
CRIMINAL REVISION E125 OF 2023
CW GITHUA, J
MARCH 12, 2024**

BETWEEN

PETER MACHARIA MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant, Peter Macharia Mwangi approached this court through an undated Notice of Motion filed on 3rd March 2023 seeking review of the sentence imposed on him by Kangema Senior Principal Magistrate's Court in Sexual Offence Case No. 4 of 2021.
2. The background to the application as can be ascertained from the court record is that the applicant was convicted of the offence of rape contrary to Section 3 (1) as read with Section 3 (3) of the *Sexual Offences Act* and was sentenced to ten years imprisonment.
He now seeks review of the sentence meted out against him on grounds that he was a first offender and highly regretted having committed the offence; that he was the breadwinner for his family and aged parents. The applicant further contended that while in prison, he has undertaken several trainings and he was now fully reformed and rehabilitated; that he has been highly disciplined and has been a role model to other prisoners.
3. He urged this court to allow his application considering that the sentence imposed on him was the minimum mandatory sentence prescribed for the offence subject of his conviction and implored me to substitute it with a more lenient sentence or a non-custodial sentence. He also invited the court to note that when passing sentence, the learned trial magistrate did not factor in the period he had spent in lawful custody during the trial.
4. The application was argued orally before me on 30th November 2023. In his brief submissions, the applicant apparently abandoned his general prayer for revision of his sentence to substitute it with a



more lenient sentence and only pleaded that the time he had spent in lawful custody be computed as part of his sentence.

5. On her part, learned Prosecution Counsel, Ms Muriu opposed the application arguing that it lacked merit and ought to be dismissed because when passing sentence, the learned trial magistrate considered all the mitigating and aggravating factors including the time the applicant had spent in lawful custody; that there was nothing to review since the sentence was lawful.
6. Having duly considered the application together with the depositions made in the supporting affidavit and the parties brief oral submissions, I find that the application invokes the revisional jurisdiction of the High Court which is donated by Section 362 as read with Section 364 of the [Criminal Procedure Code](#) (CPC). Section 362 of the CPC empowers this court to call for and examine the record of any criminal proceedings before the lower court to satisfy itself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed and the regularity of any proceedings therein.
7. The objective of granting the High Court Supervisory Jurisdiction over subordinate courts which includes revisional jurisdiction was well summarised by Mativo J (as he then was) in [Republic V Anthony Thuo Karimi](#)[2016] eKLR when he stated as follows ;

“.....The object of conferring such powers on the High Court is to clothe the highest court in a state with a jurisdiction of general supervision and superintendence in order to correct grave failure or miscarriage of justice arising from erroneous or defective orders..... The revisional powers are entirely discretionary. There is no vested right of revision in the same sense in which there is a vested right of appeal. These sections do not create any right in the litigant, but only conserve the powers of the High Court to see that justice is done in accordance with the recognized rules of criminal jurisprudence and that subordinate criminal courts do not exceed their jurisdiction or abuse the powers vested in them by the code...”.

8. That said, the question that begs an answer is whether the instant application meets the threshold for revision as limited in Section 362 of the CPC which as stated earlier, enjoins the court to revise an order or a sentence passed by the trial court only if it was not satisfied as to its correctness, legality, propriety or regularity of the proceedings.
9. To start with, I fully agree with the applicants averment that the sentence passed against him by the trial court is the minimum mandatory sentence that is provided for by the law save to add that at the time he was sentenced, there was case law emanating from both the High Court and the Court of Appeal that created new jurisprudence to the effect that the mandatory nature of minimum sentences prescribed under the [Sexual Offences Act](#) was unconstitutional for fettering the court’s discretion to impose appropriate sentences depending on the unique facts and circumstances of each case.
10. In the aforesaid caselaw which I will cite shortly, both courts were very clear in their holding that although courts had discretion in Sexual Offences to impose any other sentence other than the mandatory minimum sentence prescribed by the law, nothing stopped the trial court from passing the minimum sentence prescribed by the law in the exercise of its discretion if it was of the view that the circumstances of the case demanded it.

The caselaw referred to above is the one promulgated in the following authorities : [Philip Mueke Mainigi & 2 others V Republic](#) [2023]eKLR (Machakos); [Edwin Wachira & 9 others V DPP Constitution](#) petition No 97 of 2021 (Mombasa) and Court of Appeal & decision in [Joshua Gichuki Mwangi V Republic](#) [2015] 2023 eKLR.



11. Turning to the instant application, the applicant has not expressly complained that the impugned sentence was illegal though he appears to have done so by implication given his reference to the above caselaw and his complaint that he was sentenced to the minimum mandatory sentence prescribed for the offence of rape. But as stated earlier, imposition of the minimum sentence was not by itself illegal as a trial court still retained discretion to impose it if in the exercise of its discretion it was satisfied that it was the appropriate sentence given the circumstances of the case
12. In this case, the trial court's record shows that when passing sentence, the learned trial magistrate stated that he had considered both the prosecution's submissions which highlighted the aggravating factors in the case as well as the applicant's plea in mitigation. He then proceeded to pass the impugned sentence. There is nothing to show from the record that the learned trial magistrate imposed the sentence just because it was the minimum sentence prescribed by the law for the offence the applicant had committed and that the sentence was not a product of the exercise of his discretion.
13. Given the foregoing, I am not satisfied that the aforesaid sentence was illegal or that it was a result of any error or mistake save for the fact that when passing the said sentence, the learned trial magistrate did not indicate that he had taken into account the period the applicant had spent in lawful custody prior to the date he was sentenced as required by Section 333(2) of the *Criminal Procedure Code*. This is the only error that is apparent on the face of the court record which may justify intervention by this court.
14. The mitigating factors put forward by the applicant are appreciated but unfortunately, they do not constitute grounds for revision as set out in Section 362 of the Criminal Procedure Code. Such factors may only be relevant in cases where the application for review is premised on grounds that the trial court failed to consider the applicant's plea in mitigation when passing sentence which is not the case in the instant application. I may also add that such factors may constitute good grounds for supporting petitions to his Excellency the President for the exercise of his prerogative of mercy under the *Power of Mercy Act* but cannot be the basis of invoking this court's revisional jurisdiction.
15. For all the above reasons, this application succeeds to the extent that the sentence imposed by the trial court shall take into account the period the applicant had spent in lawful custody prior to the date he was sentenced. My perusal of the court record shows that the applicant was in lawful custody throughout his trial.

Consequently, his sentence shall take effect from the day he was arrested which is 4th January 2021 in compliance with Section 333 (2) of the Criminal Procedure Code.

It is so ordered.

DATED, SIGNED AND DELIVERED AT MURANG'A THIS 12TH OF MARCH, 2024.

C.W GITHUA

JUDGE

In the presence of :

The applicant

Ms. Muriu for the respondent

Ms. Susan Waiganjo Court Assistant

