



**Rono v Republic (Miscellaneous Criminal Application E015 of 2022)
[2024] KEHC 2172 (KLR) (6 March 2024) (Judgment)**

Neutral citation: [2024] KEHC 2172 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KILGORIS
MISCELLANEOUS CRIMINAL APPLICATION E015 OF 2022**

F GIKONYO, J

MARCH 6, 2024

BETWEEN

HILLARY KIMUTAI RONO APPLICANT

AND

REPUBLIC RESPONDENT

*(Revision from Original Conviction/Sentence) in Kilgoris
SPMCR No. 828 of 2013 and Kisii HCCRA No. 69 of 2014)*

JUDGMENT

Sentence re-hearing

1. Before this court for determination is an undated chamber summons seeking for an award of lenient definite sentence as provided under articles 50(2)(p) and (q) of the Constitution, and that this court invoke the provisions of section 333(2) of the Criminal Procedure Code and factor the period spent in remand.
2. The applicant was charged and convicted of the offence of defilement contrary to section 8(1) as read with section 8(3) of the Sexual Offences Act. He was sentenced to 20 years imprisonment.
3. The applicant filed an appeal vide Kisii HCCRA no. 69 of 2014. The appeal was dismissed.
4. The applicant orally submitted that he is reformed. He urged this court to place him on probation.
5. Mr. Okeyo prosecution counsel opposed the application. He urged this court to dismiss the application as the applicant ought to have applied for a presidential pardon.



Analysis And Determination

Jurisdiction and possible abuse of process

6. The court (Majanja J) in KISII HCCRA No 69 of 2014 analyzed all relevant mitigating as well as aggravating factors. Subsequently, the judge stated that the trial court had sentenced the applicant to the minimum sentence provided in section 8(3) of the Sexual Offences Act. And, uphold the said sentence.
7. Therefore, although the application is styled as ‘resentencing’ and is brought as ‘an application for redress of violation of a right and fundamental freedoms’ under article 165(3) and 23(3) of the Constitution, its real character is an appeal against the judgment of a court of concurrent jurisdiction (Majanja J.).
8. In law, judges of concurrent jurisdictions stand between themselves in a horizontal or non-hierarchical order as they are of equal legal authority, with none having jurisdiction to sit on appeal on decisions by or supervise a court of concurrent jurisdiction.

Of presidential pardon

9. The prosecution counsel submitted that the applicant ought to have applied for presidential pardon.
10. Although he did not specifically mention it, the prosecution counsel must have been referring to the ‘Power of mercy’ provided in article 133 of the Constitution as follows
 1. On the petition of any person, the President may exercise a power of mercy in accordance with the advice of the Advisory Committee established under clause (2), by -
 - a. granting a free or conditional pardon to a person convicted of an offence;
 - b. postponing the carrying out of a punishment, either for a specified or indefinite period;
 - c. substituting a less severe form of punishment; or
 - d. remitting all or part of a punishment
11. See also article 133(4) of the Constitution which provides that: -

The Advisory Committee may take into account the views of the victims of the offence in respect of which it is considering making recommendations to the President
12. Be that as it may, in the circumstances of this case, any redress within the judicial system including, lesser or less severe sentence, is to be sought in the Court of Appeal.
13. In the upshot, the application is dismissed.
14. Orders accordingly.

DATED, SIGNED, AND DELIVERED AT NAROK THROUGH MICROSOFT TEAMS ONLINE APPLICATION THIS 6TH DAY OF MARCH, 2024

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HON. F. GIKONYO M.

JUDGE

In the presence of:



C/A – Mr. Leken

Applicant - Present

Mr. Okeyo for DPP - Present

