



**Dhadho v Republic (Miscellaneous Criminal Application
E016 of 2023) [2024] KEHC 4365 (KLR) (12 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 4365 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT GARISSA
MISCELLANEOUS CRIMINAL APPLICATION E016 OF 2023**

**JN ONYIEGO, J
APRIL 12, 2024**

BETWEEN

ZURA BERU DHADHO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant herein was charged and found guilty of the offence of defilement contrary to section 8(1) (2) of the *Sexual Offences Act* No. 3 of 2006. The particulars of the offence were that on 11.09.2014 within Tana River County he did commit an act which caused penetration of his genitals to the organ of JK, a child aged 3 years.
2. He was tried, convicted and thereafter sentenced to serve life imprisonment.
3. He appealed against the conviction and sentence of the trial magistrate and vide a judgment delivered on 04.06.2019, this court dismissed the appeal in its entirety.
4. The applicant has since approached this court once more vide chamber summons dated 10.07.2023 and filed in court on 03.08.2023 seeking for review of his sentence arguing that the same is unconstitutional. He urged that after finding that the sentence meted out against him is unconstitutional, this court should proceed to mete out a lenient sentence. That the trial court did not consider his mitigation due to the mandatory nature of the sentence yet he was a first offender. He placed reliance on the cases of Phillip Mueke Maingi and Others v A.G., Petition No. E017 of 2021 at Machakos and Edwin Wachira & 9 Others v Republic, Petition No. 97 of 2021 at Mombasa High Court wherein it was held that life imprisonment was unconstitutional.
5. He argued that the life sentence imposed on him was contra articles 28, 29 (d) and (f) of *the constitution*. He further stated that as a first offender, he ought to have benefitted from the least severe of the



prescribed punishments of an offence as provided for in article 50(2)(p) of *the constitution*. During the hearing of the application, the applicant urged this court to allow his prayers.

6. Mr. Kihara, counsel for the respondent opposed the same arguing that this court was functus officio. Counsel urged that the applicant previously had filed an appeal against his conviction and sentence before this court and the same was dismissed for want of merit. That this court in allowing the orders prayed, would be akin to it sitting on its own appeal.
7. I have considered the application and the oral submissions by the parties. The main issue for determination is whether this Honourable Court has jurisdiction to allow the orders sought.
8. It is not in dispute that having been aggrieved by the judgement of the trial court the applicant appealed to this court and the appeal upon being heard and determined, was dismissed for want of merit.
9. It is trite that 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. As such, this court, although differently constituted, pronounced itself via a judgment delivered on 04.06.2019. Therefore, it is only a sign of good practice that if the applicant was not satisfied by the determination by Dulu J, the best he could have done was to appeal the said finding at the Court of Appeal. [Also See Republic vs Ongaro & another (Criminal Case 62 of 2013) [2023] KEHC 2309 (KLR)].
10. From the foregoing, I find that I have no jurisdiction to entertain the application herein and the same is thus dismissed.

DATED, SIGNED AND DELIVERED VIRTUALLY AT GARISSA THIS 12TH DAY OF APRIL 2024

J.N.ONYIEGO

JUDGE

