



**Mwadime v Republic (Criminal Revision E015 of 2023)  
[2024] KEHC 6778 (KLR) (3 April 2024) (Ruling)**

Neutral citation: [2024] KEHC 6778 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E015 OF 2023  
GMA DULU, J  
APRIL 3, 2024**

**BETWEEN**

**ISHMAEL NYAMBU MWADIME ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is an Application for revision of sentence filed on 25<sup>th</sup> April 2023 in which the Applicant has asked for sentence re-hearing pursuant to the decision in the case of *Edwin Wachira & 9 Others v Republic* Petition No 97 of 2021 and Article 50 of the *Constitution*.
2. The Application was filed with a Supporting Affidavit sworn by the Applicant Ishmael Nyambu Mwadime in which the applicant deposes that he is requesting this court to apply the reasoning in the case of *Francis Karioko Muruatetu & Another v Republic* (2015) eKLR, and emphasized that the High Court has unfettered discretion in relation to sentencing.
3. It was also deponed that the Applicant appealed to the High Court but did not appeal to the Court of Appeal.
4. The Application was canvassed through written submissions. In this regard, I have perused and considered the submissions filed by the Applicant as well as the submissions filed by the Director of Public Prosecutions. I note that the applicant has relied on several decided cases including the case of *Mainigi & Others v ODPP* – Petition E017 of 2021
5. In determining this Application, I have to mention that the Applicant was convicted for indecent act Contrary to Section 11(1) of the *Sexual Offences Act* and sentenced to fifteen (15) years imprisonment.
6. He appealed to the High Court in Voi High Court Criminal Appeal No.16 of 2019 and the High Court dismissed the appeal on 26<sup>th</sup> November 2021 and upheld both his conviction and sentence.



7. The applicant has submitted that this Court has jurisdiction to entertain this Application, but the Director of Public Prosecutions has argued that this court has no jurisdiction to entertain the Application.
8. In my view, this Court cannot review the sentence of the Applicant because this same Court has substantively considered and upheld the sentence on Appeal.
9. In my view, if the Applicant wanted to rely on the many decided Court cases he is presently relying on, he should have brought the said cases to the attention of the High Court during hearing of the appeal as the said cases were as the appeal was decided by 2017. He was also granted a right of appeal to the Court of Appeal, which he should have taken advantage of.
10. I thus find no merits in the Application on review of sentence. I dismiss the Application.

**DATED, SIGNED AND DELIVERED THIS 3<sup>RD</sup> DAY OF APRIL 2024 AT VOI IN THE OPEN COURT.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant

Mr. Sirima for State

