



**Langat v Republic (Miscellaneous Application E158 of 2023)  
[2024] KEHC 5094 (KLR) (13 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 5094 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NAKURU  
MISCELLANEOUS APPLICATION E158 OF 2023**

**SM MOHOCHI, JA**

**MAY 13, 2024**

**BETWEEN**

**DAVID LANGAT ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. The brief facts of the case are that the Applicant herein was arrested on 12<sup>th</sup> January, 2019 and charged on 14<sup>th</sup> January, 2019 in Molo Chief Magistrate’s Court Sexual Offences Case No. 6 of 2019 with the offence of defilement under Section 8(1) as read with section 8 (3) of the *Sexual Offences Act*. The trial Court in its judgment of 13<sup>th</sup> August, 2020 found the Applicant guilty and sentenced him to serve 20 years imprisonment. He appealed in Nakuru High Court Criminal Appeal No. 35 of 2020 against conviction and sentence. The Court found no merit in the Appeal and in the judgement of 7<sup>th</sup> July, 2021 dismissed the appeal and affirmed the conviction and sentence.

**Notice of Motion**

2. The Application before Court for determination was filed on 25<sup>th</sup> October, 2023 and seeks:-
  - i. Spent
  - ii. That the Honourable court be pleased to grant re-hearing of the sentence in CM’s Court at Molo Criminal case Number S.O. 6 of 2019.
  - iii. That the Honourable Court be pleased to receive mitigation from the Applicant herein for consideration of an appropriate sentence.
  - iv. That the Honourable court be pleased to issue any other order it may deem fit for the interest of justice.



3. The Application is supported by the undated affidavit filed on even date in which he avers that the Court is bound by the decision of the Supreme Court under Article 163 (7) of the Constitution. That the judgement in Phillip Mueke Maingi rules that individuals convicted of Sexual Offences are at liberty to Petition for resentencing. He further deponed that the Court has jurisdiction to hear re-sentencing and met out appropriate sentence in line with Article 165 of the Constitution.
4. That the Court will be discharging its Constitutional obligation under Article 20(3) (a) (b) of the Constitution.

### **Applicant's Submissions**

5. The Applicant in his submissions filed on 6<sup>th</sup> March 2024 submitted that the Court has jurisdiction to entertain his application deriving its powers from Article 165 (5) (a) and (b) of the Constitution. He also urged the Court to be guided by the Sentence Policy Guidelines 2016 on the objectives of retribution, deterrence, rehabilitation and restorative justice and Article 50(2) of the Constitution and move towards restorative justice.
6. He submitted that, he is an old man and being in prison all that time is enough deterrence for him and has found out painfully that crime does not pay. He also contended that has remained true to the rehabilitation process and has engaged in theological studies as well as undergoing counselling services. Has changed his behaviour, has an amicable relationship with his fellow inmates, is remorseful and regrated his actions having undertaken a complete transformation. He contended that his family and community are willing to accept him back in the society.
7. He submitted that the provisions of Section 333 (2) of the Criminal Procedure Code as well as Article 27 (1) and (2) of the Constitution be considered as his Application meets the threshold for granting of the prayers sought. He implored that the Court does interfere with the sentence.
8. He relied on the pronouncements in the following authorities *Boniface Waweru v Mary Njeri and Another* HC Miscellaneous Application No. 639 of 2005 (unreported) *Lilian v Caltex Oil Kenya Limited* (1989) KLR *Francis Muruatetu & Another v Republic* (2017) eKLR. *Phillip Mueke & Others v Republic* (2022) *William Okungu Kittiny v Republic* (2018) eKLR

### **Respondent's Submissions**

9. The Respondent through State Counsel Ms. Jackie opposed the application and in her oral submissions, she stated that the Application is invoking the Constitution and the case of Phillip Mueke concerning the mandatory nature of the sentence. That Section 8(3) of the Sexual Offences Act provided for a minimum 20 years' imprisonment as the victim was 14 years old. She contended that in the Phillip Mueke case, the sentence was not outlawed but rather mandatory in nature thus remains lawful.
10. She further submitted that from the decision of the Trial Court the sentence was not imposed in mandatory terms. Mitigation was considered and the Court found that from the aggravating circumstances of the of the case, a deterrent sentence was applicable and thus imposed 20 years.
11. The aggravating circumstances of the case are that the victim was a 14-year-old child in primary school and was defiled several times by the Applicant as a teacher in her school Tembo Primary. That further the victim was pregnant during the trial. The Trial Court was of the view that the Applicant was a person of authority and held a position of trust to ensure the victim was not taken advantage of and was old enough to be the victims grandparent.



12. She contended that the Trial Court was right in giving a deterrence sentence and urged the Court not to disturb the sentence

### **Analysis and Determination**

13. This Court conforms to the school of thought that, disturbing discretion of a subordinate court should be done sparingly and only in the most deserving of cases See *Ogolla S/o Owuor v R* {1954} EACA 270 on when the Court will interfere with discretion of trial court in sentencing, that:

“The Court does not alter a sentence unless the trial Judge has acted upon wrong principles or overlooked some material factors. This was further echoed in the dictum of the cases in *R v Shershowsky* {1912} CCA TLR 263 as emphasized in Shadrack Kipkoech Kogo v R Criminal Appeal No. 253 of 2003 thus “Sentence is essentially an exercise of discretion by the trial Court and for this Court to interfere it must be shown that in passing the sentence, the sentencing Court took into account an irrelevance factor or that a wrong principle was applied or that short of these, the sentence itself is so excessive and therefore an error of principle must be interfered.” (See also *Sayeka v R* {1989} KLR 306)

14. Owing to the foregoing, it is important for this court to consider its jurisdiction as was held in the case of *Samuel Kamau Macharia v. KCB & 2 others*, Civil application No. 2 of 2011

“A court’s jurisdiction flows from either the *Constitution* or legislation or both. Thus, a court of law 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.”

15. Article 50(2) of the *Constitution* provides: -

“Every accused person has the right to a fair trial, which includes the right-

(q) if convicted, to appeal to, or apply for review by, a higher court as prescribed by the law.”

16. Article 165(6) of the *Constitution* empowers the High Court to exercise supervisory jurisdiction over subordinate courts. The *Criminal Procedure Code* is the Statute that expounds on this jurisdiction. Section 362 of the *Criminal Procedure* provides: -

“The High Court may call for and examine the record of any criminal proceedings before any subordinate court for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of any subordinate court.”

17. Section 364 of the *Criminal Procedure Code* empowers the High Court to exercise its revisionary powers ... conferred to it as a Court of Appeal by Sections 354, 357 and 358 and may enhance sentence.

18. In the case of *Prosecutor v Stephen Lesinko* [2018] eKLR Nyakundi J outlined the principles which will guide a court when examining the issues pertaining to Section 362 of the *Criminal Procedure Code* as follows: -

- a. Where the decision is grossly erroneous;
- b. Where there is no compliance with the provisions of the law;



- c. Where the finding of fact affecting the decision is not based on evidence or it is result of misreading or non-reading of evidence on record;
  - d. Where the material evidence on the parties is not considered; and
  - e. Where the judicial discretion is exercised arbitrarily or perversely if the lower court ignores facts and tries the accused of lesser offence.
19. The Applicant had Appealed against his conviction and sentence which Appeal was dismissed on the 7<sup>th</sup> July, 2021 with the same as imposed by trial court being confirmed.
20. This being a criminal revision, the onus was on the Applicant to demonstrate the sentence as imposed was illegal, that its imposition was grossly irregular and that the trial court did not exercise its discretion in a judicious manner.
21. This Court notes that the Trial Court did consider the Applicant's mitigation that was clearly outweighed by the aggravating circumstances warranting a deterrent sentence. The same was never imposed in mandatory terms and the courts discretion was never fettered.
22. This Court is persuaded of the correctness, legality or propriety of the sentence imposed on 13<sup>th</sup> August, 2020, and finds no basis to disturb the same.
23. Consequently, this Court finds the Notice of Motion dated 5<sup>th</sup> October, 2023, to be without any merit and the same is accordingly dismissed.

It is so Ordered.

**SIGNED, DATED AND DELIVERED AT NAKURU ON THIS 13<sup>TH</sup> DAY OF MAY 2024.**

**JUSTICE MOHOCHI S.M**

**JUDGE**

