



**Mwakio v Republic (Criminal Revision E013 of 2023)
[2024] KEHC 6924 (KLR) (16 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 6924 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E013 OF 2023**

GMA DULU, J

MAY 16, 2024

BETWEEN

SAMUEL MAKASO MWAKIO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application filed on 25th April 2023 by Samuel Makaso Mwakio under Article 22 (1), 23(1), 25(c), 27, 28, 50(2)(p)(q), and 159(2) and 160(1) of the Constitution.
2. Through application, the applicant seeks the following orders:-
 1. That the court be pleased to review his sentence and grant him a lenient sentence informed by his mitigation and the unique facts and circumstances of his case pursuant to Article 50(2)(p) (q) of the Constitution of Kenya.
 2. That the period spent in remand custody be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the Criminal Procedure Code and also pursuant to Vincent Sila Jona & 87 Others v The Attorney General.
 3. That the court be pleased to grant him probation orders as his circumstances fit.
 4. Any other order that the court deems fit to give in the interests of justice.
3. The application was filed with a supporting affidavit sworn by the applicant in which it is deponed that he was sentenced to 50 years imprisonment for defilement in Wundanyi PM Criminal Case No. 16 of 2019; that his appeal to the Voi High Court Criminal Appeal No. 20 of 2020 was dismissed on both conviction and sentence, and that he has no pending 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.
5. In considering this application, I have been availed the judgment of the trial court, as well as the record on sentencing.
6. I note that before sentencing, the trial Magistrate heard the mitigation of the applicant. The Magistrate noted that the complainant in two counts of defilement were young girls of 5 and 6 years respectively, and that the statutory mandatory sentence for each count for which the appellant was convicted was life imprisonment, as provided under Section 8(2) of the *Sexual Offences Act*, and sentenced him to 25 years imprisonment for each of the two offences to run consecutively, thus totaling 50 years imprisonment.
7. As the applicant himself deponed in the affidavit, his appeal to the High Court on both conviction and sentence was dismissed.
8. In my view, the appellant should have considered himself lucky not to have been sentenced to the statutory life imprisonment for this repeat offence on different victims, each of whom was a very young child of tender years at 5 years and 6 years respectively.
9. In my view, if the applicant was dissatisfied with the decision of the High Court and the trial court on either conviction or sentence, he should have appealed to the Court of Appeal, and not come to this same High Court for review of sentence, as the trial Magistrate, in my view took into account all relevant factors and infact bent backwards to give the appellant a most favourable sentence.
10. As a consequence, I find no merits in the application for review of sentence, which is hereby dismissed.

**DATED, SIGNED AND DELIVERED THIS 16TH DAY OF MAY 2024 IN OPEN COURT AT VOL.
GEORGE DULU**

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JUDGE

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant

Mr. Sirima for State

