



**Okari v Republic (Criminal Miscellaneous Application
E083 of 2023) [2024] KEHC 4920 (KLR) (14 May 2024) (Ruling)**

Neutral citation: [2024] KEHC 4920 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CRIMINAL MISCELLANEOUS APPLICATION E083 OF 2023**

PN GICHOHI, J

MAY 14, 2024

BETWEEN

PETER MOMANYI OKARI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The Applicant (Peter Momanyi Okari) filed a Notice of Motion on 27th June 2023 seeking re-sentence hearing in Nakuru Chief Magistrate’s Court Criminal Case No. 33 of 2016 where he was sentenced to 22 years imprisonment after being found guilty of the offence defilement contrary to section 8(1) as read with Section 8 (2) of the *Sexual Offences Act* No. 3 of 2006. He cited Petition No. E017 of 2022 Philip Mueke Maingi and others versus Republic to persuade the Court to give an appropriate sentence.
2. In his oral address to this Court, the Applicant stated that he had appealed the trial court’s decision in High Court . Dissatisfied with the High Court decision, he move to the to the Court of Appeal but has since withdrawn the same.
3. He urged the Court to consider the documents filed in support of withdrawal and the mitigating factors.
4. The Respondent filed a Replying Affidavit sworn on 01/02/2024 by James Kihara in his capacity as the Prosecution Counsel. He opposed the application on the grounds that this Court lacks jurisdiction to review the sentence as High Court had already made a ruling on the same. He opined that the Applicant’s recourse lies in the Court of Appeal.



Determination

5. This Court has considered the application, the documents in support and the response by the Respondent. The issue for determination is whether this Court has jurisdiction to grant the orders sought.
6. It is a fact that the High Court in *Maingi & 5 others v Director of Public Prosecutions & another* (Petition E017 of 2021) [2022] KEHC 13118 (KLR) (17 May 2022) (Judgment) held that:-

“

 - “1) To the extent that the *Sexual Offences Act* prescribe minimum mandatory sentences, with no discretion to the trial court to determine the appropriate sentence to impose, such sentences fall foul of Article 28 of the Constitution. However, the Courts are at liberty to impose sentences prescribed thereunder so long as the same are not deemed to be the mandatory minimum prescribed sentences.
 - 2) Taking cue from the decision in *Francis Karioko Muruatetu & Another vs. Republic* [2017] eKLR (Muruatetu 1) those who were convicted of sexual offences and whose sentences were passed on the basis that the trial Courts had no discretion but to impose the said mandatory minimum sentence are at liberty to petition the High Court for orders of resentencing in appropriate cases.”
7. From the material placed before this Court, there is no dispute that indeed the Applicant was charged as stated and sentenced to served 22 years imprisonment.
8. It is noted that the Applicant had stated in mitigation:- “I have a wife and two small children. I did not commit the offence.”
9. While sentencing, the trial court held:-

“I have considered the facts of this case and accused’s mitigation. The accused does not appear remorseful for what he did. He deserves a deterrent sentence for suffering he caused the minor. He is sentenced to 22 years imprisonment.”
10. He appealed to High Court on both conviction and sentence vide High Court Criminal Appeal No. 166 of 2016. In its judgment dated 18th June 2019, High Court found no merit in the appeal and dismissed it in its entirety.
11. The Applicant moved to the Court of Appeal in Criminal Appeal No. 46 of 2019 challenging the High Court decision . However, he filed a Notice of Withdrawal of the Appeal and on 16th September 2020, the Court of Appeal marked the Appeal as withdrawn and deemed it as dismissed under Rule 68 (10 of the *Court of Appeal Rules*.
12. From the material herein, it is apparent that the Applicant had also filed on 3rd July 2023 High Court Misc. Application No. E056 of 2022 seeking re-sentence and also citing *Philip Mueke Maingi case (supra)* and annexing documents as mitigating factor. Though the outcome of that application has not been disclosed to or accessed by this Court, it apparent that the Applicant has filed a duplicate application on the same issue which should not happen at all.



13. Be that as it may, the Court notes that nothing in the body of the judgment and also in the sentence by the trial court indicates that the said court was influenced by the mandatory minimum sentence. Neither does that appear in the High Court judgment.
14. In the circumstances, the Applicant's recourse lay in the Court of Appeal if he was aggrieved. This Court lacks jurisdiction to interfere with the said sentence.
15. In conclusion the application herein is hereby dismissed.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 14TH DAY OF MAY, 2024.

PATRICIA GICHOHI

JUDGE

In the presence of:

Peter Momanyi Okari- Applicant

Mr. Kihara for Respondent

Ruto - Court Assistant

