



**Mwakitau v Republic (Criminal Revision E111 of 2023)  
[2024] KEHC 9563 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9563 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL REVISION E111 OF 2023  
GMA DULU, J  
JUNE 12, 2024**

**BETWEEN**

**MWAMKITA MAGHANGA MWAKITAU ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Before me is a Notice of Motion filed on 30<sup>th</sup> October 2023, in which the applicant seeks review of prison sentence on humanitarian grounds for ill health pursuant to Section 35 of the [Penal Code](#).
2. In the application, the applicant states that he is now about 71 years old and he asked for reconsideration of his twenty (20) years imprisonment sentence for incest contrary to Section 20(1) of the [Sexual Offences Act](#).
3. I note that the applicant did not file any appeal from the trial court's decision but has now come to this court for review of sentence relying on the Court of Appeal decision in Mombasa Criminal Appeal No. 110 of 2022 [Makumbi Subui Wanyeso =Versus= Republic](#), in which the Court of Appeal on 9<sup>th</sup> June 2023 allowed the appeal on sentence in the following terms:-

“39. It is therefore our view that the Attorney General should take legislative measures that would facilitate periodic review of sentences for convicts who are either over 70 years of age or who have served sentences over 20 years imprisonment with a view to determining whether their continued incarceration is still justifiable or legally tenable.

40. We accordingly, allow the appeal and taking into account the period of time already served by the appellant, direct that he be set at liberty unless otherwise lawfully held.



41. We direct that in light of our recommendation above, the Deputy Registrar of this court serves a copy of this judgment on the office of the Attorney General.”
4. The present application has been 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. The Director of Public Prosecutions opposes the application mainly on the ground that this court has no jurisdiction to review a sentence which was substantively determined by a court of competent jurisdiction.
  5. On the other hand the applicant maintains that he was sentenced at the age of 61 years old and has already served 10 years imprisonment and is very old, and thus deserves review of sentence.
  6. On my part, having considered the application and rival arguments, I find that this court cannot review the prison sentence imposed on the applicant through a revision application merely because of advanced age, as there is presently no law which confers such revision powers on this court.
  7. I appreciate what the Court of Appeal in Mombasa [\*Criminal Appeal No. 110 of 2022\*](#) stated, but that decision was applicable to that particular case wherein the appellant was sentenced to life imprisonment, and the Court of Appeal therein made a recommendation to the Attorney General to take appropriate action for enactment of a law to deal with periodic review of sentences of those in prison who were 70 years old or above. Since I have not been told that any such law has been enacted, my hands are tied.
  8. I thus find no merits in this application. The application for review of sentence herein is hereby dismissed.

**DATED, SIGNED AND DELIVERED THIS 12<sup>TH</sup> DAY OF JUNE 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-

Alfred/Trizah – Court Assistants\*\*

**Applicant in person**

**Mr. Sirima for the State**

Page 2 of 2

