



**Mwakio v Republic (Miscellaneous Criminal Application
E008 of 2023) [2024] KEHC 9034 (KLR) (12 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9034 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
MISCELLANEOUS CRIMINAL APPLICATION E008 OF 2023**

**GMA DULU, J
JUNE 12, 2024**

BETWEEN

GEORGE HEZRON MWAKIO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application filed on 19th January 2023, in which the applicant has asked for review of sentence. The specific prayers in the application are as follows:-
 1. That the court be pleased to review the 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 *Constitution* of Kenya.
 2. That the period he spent in remand custody as from September 2007 to 13th March 2008 be computed into the eventual sentence to be awarded pursuant to the provisions of Section 333(2) of the *Criminal Procedure Code* and pursuant to *Vincent Sila Jona & 87 others v Attorney General*.
 3. That the court be pleased to grant him probation orders if his circumstances so fit.
 4. Any other order that the Honorable Court deems fit to give in the interests of justice.
2. The application was filed with a supporting affidavit sworn on 21st December 2022 by the applicant George Hezron Mwakio, wherein he deponed inter alia that he was sentenced to 30 years imprisonment under Section 8(3) of the *Sexual Offences Act* in Taveta SRM Criminal Case 604 of 2007, and that his appeal to the High Court in Criminal Appeal No 169 of 2008 was dismissed.
3. In support of his application, the applicant provided a copy of judgment in Mombasa High Court Criminal Appeal No 169 of 2009, which was delivered by M. Odero J. on 28th June 2010. I have also



been informed that the trial court file was destroyed after gazettelement, and thus was not availed to this court.

4. The application was canvassed through written submissions, and 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 Director of Public Prosecutions has opposed the request for review of sentence.
5. On my part, having considered the facts and circumstances of the application, I am of the view that it cannot be said that the provisions of Article 50(2)(p) and (q) of *Constitution*, and Section 333(2) of the *Criminal Procedure Code* were not taken into account in determining the sentence herein.
6. In my view, from the contents of the judgment in the High Court appeal, it is clear that this was a case of an aggravated offence which deserved an appropriately deserving sentence. In this regard, it has to be stated here that after observing that the applicant was a repeat offender as he had previously committed attempted rape, the trial court in sentencing him stated as follows, and which was also adopted by the High Court:-

“The offence the accused has committed was aggravated as he forced the complainant a girl child aged 15 years to walk through bushes throughout the night of 27th to 28th 10 2007 across the Kenya – Tanzania border in circumstances indicating he kidnapped/abducted her.”
7. In my view therefore, this court having substantively considered the sentence imposed herein on appeal, and having agreed with the findings of the trial court that it was an aggravated offence, this same court has no jurisdiction to consider the same sentence again.
8. I thus find no merits in the application, which is hereby dismissed.

DATED, SIGNED AND DELIVERED THIS 12TH DAY OF JUNE 2024 IN OPEN COURT AT VOL.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant in person

Mr. Sirima for State

