



**Nyange v Republic (Criminal Revision E014 of 2023)
[2024] KEHC 9030 (KLR) (11 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 9030 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL REVISION E014 OF 2023
GMA DULU, J
JUNE 11, 2024**

BETWEEN

MATHIAS MWAKIMA NYANGE APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is an application by way of Chamber Summons filed on April 25, 2023 under sections 216, 329, and 333(2) of the Criminal Procedure Code (Cap.75) seeking re-hearing of sentence pursuant to the decision in Edwin Wachira & 9 others v Republic – Petition No 97 of 2021 Mombasa High Court.
2. According to the applicant, in the above case, the High Court declared the provisions of the Sexual Offences Act which prescribed minimum sentences with no discretion to the trial court to determine the appropriate sentence as violating the principles of fair trial under article 50 of the Constitution.
3. The application was filed with a supporting affidavit sworn by the applicant Mathias Mwakima Nyange on January 24, 2023 amplifying the grounds.
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. I note that the Director of Public Prosecutions has opposed the request for review of sentence.
5. In this matter, I observe that the applicant admits that he filed Voi High Court Criminal Appeal No. 76 of 2014 wherein his appeal was dismissed, and conviction and sentence of 20 years imprisonment upheld.
6. The applicant has again come to the High Court in the present application, not disclosing discovery of new factors, or asking for factoring of the period he was in remand custody during trial to be taken into



account, but challenging the substantive sentence imposed herein on the basis that it was mandatory minimum sentence.

7. In my view, the applicant has no legal basis of challenging the legality or constitutionality of the sentence imposed herein in this High Court, which has already made a substantive decision on same in appeal, as his sentence was substantively considered and affirmed in Voi High Court Criminal Appeal No. 76 of 2014.
8. In my view, the only avenue the applicant might have to challenge the legality of the sentence, is in the Court of Appeal, as this court cannot review its own substantive decision.
9. I thus find no merits in the application. The application for sentence rehearing or sentence review herein is hereby dismissed.

DATED, SIGNED AND DELIVERED THIS 11TH 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 State

