



**Baron v Republic (Criminal Petition E086 of 2023)  
[2024] KEHC 9029 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9029 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT VOI  
CRIMINAL PETITION E086 OF 2023  
GMA DULU, J  
JULY 9, 2024**

**BETWEEN**

**DAVIS MASUMBUO BARON ..... APPLICANT**

**AND**

**REPUBLIC ..... RESPONDENT**

**RULING**

1. Though this matter was brought to this court as a constitutional petition, it is actually an application for review of sentence imposed in Taveta Magistrate's Criminal Case No. 214 of 2009.
2. In this application brought by way of Chamber Summons filed on 25<sup>th</sup> May 2023, the applicant seeks review of his thirty (30) years (prison) sentence imposed by the trial court in Taveta Criminal Case No. 214 of 2009, and relied on Article 50(2)(p)(q) of *Constitution*.
3. In the supporting affidavit filed with the application, the applicant deponed that he had served more than half of his prison sentence and has a balance of only five (5) years imprisonment, and asks for the sentence to be reviewed to probation sentence.
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. Having considered the whole application, I note that the applicant was sentenced to thirty (30) years imprisonment on 12<sup>th</sup> November 2009 for defilement contrary to Section 8(1) as read with Section 8(2) of the *Sexual Offences Act* No. 3 of 2006.
6. He thereafter, appealed to this court and later to the Court of Appeal, and on 21<sup>st</sup> January 2022 the Court of Appeal dismissed his appeal.



7. I note also that in the Court of Appeal, the court noted that the applicant should in fact have been lawfully sentenced to life imprisonment, but that since no notice for enhancement of sentence was issued, the Court of Appeal retained the sentence of thirty (30) years imprisonment.
8. In my view therefore, with the above substantive decision of the Court of Appeal on the sentence imposed herein, this court being lower in hierarchy cannot reconsider the sentence imposed. The applicant is in fact lucky that the Court of Appeal did not enhance his sentence.
9. In my view, the only two options available to the applicant now are either to appeal to the Supreme Court, or to await until his prison sentence falls below three (3) years, and come to this court to consider whether to put him on alternative non-custodial sentence, subject to the sentence review report to be filed by the Probation Officer at that time.
10. As for the present application, it is not merited. I dismiss the application.

**DATED, SIGNED AND DELIVERED THIS 9<sup>TH</sup> DAY OF JULY 2024 IN OPEN COURT AT VOI.**

**GEORGE DULU**

**JUDGE**

In the presence of:-d

Alfred/Trizah – Court Assistants

Applicant

Mr. Sirima for State

