



**Mwangi v Republic (Miscellaneous Criminal Application
E040 of 2023) [2024] KEHC 9078 (KLR) (22 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9078 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT KIAMBU
MISCELLANEOUS CRIMINAL APPLICATION E040 OF 2023**

BM MUSYOKI, J

JULY 22, 2024

BETWEEN

WILLY KUNGU MWANGI APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. The applicant and one Laban Wambugu Waruguru alias Pastor John were convicted in Thika Chief Magistrate's Court criminal case number 2024 of 2016 on 12-08-2021 of committing an indecent act with a child contrary to section 11(1) of the *Sexual Offences Act* number 3 of 2006. They were, after mitigation sentenced to serve ten years in jail.
2. The applicant has brought this application vide chamber summons filed in court on 9-06-2023 seeking four orders three of which are now spent. In the remaining prayer, the applicant is asking this court to give breath to Article 47 and 48 of the *Constitution* and Section 35(1) and 216 of the *Criminal Procedure Code*. I have struggled to understand the purport of that prayer vis a vis the applicant's submission.
3. Article 47 of the *Constitution* guarantees all persons the right to fair administrative action. I am unable to relate the Article with what the applicant stated when he appeared before me for hearing on 4-06-2024. The issues raised in the application are judicial functions which have their set procedures. I don't understand what administrative action the applicant wanted the court to address.
4. Article 48 of the *Constitution* guarantees the right to access justice. Similarly, I am unable to relate the same to this application. The applicant went through a full trial and I have not heard him complain that he was not given adequate time or opportunity or that the trial was not fair. His right to access the seat of justice has been open to him all through since the date he took plea at the lower court. But the seat must be determinate in each particular case.



5. The applicant has also sought reliance on Sections 35(1) and 216 of the *Criminal Procedure Code*. Section 35(1) provides that;

‘A private person arresting another person without a warrant shall without unnecessary delay make over the person so arrested to a police officer, or in the absence of a police officer shall take that person to the nearest police station’.
6. This Section has no relevance in this matter. Perhaps the applicant was thinking of Section 35(1) of the *Penal Code* which comes close to his submissions before me. Even so, the same cannot be applicable in his case because the said Section is meant for the trial court. It is not meant for an appellate jurisdiction in the manner the applicant has approached this court.

Section 216 of the *Criminal Procedure Code* provides;

‘The court may before passing sentence or making an order against an accused person under Section 215 receive such evidence as it thinks fit in order to inform itself as to the sentence or order properly to be passed or made’.
7. Again, this is not a provision that can be used in in a court exercising appellate jurisdiction. This court has not tried the appellant such that it can make use of Section 215 of the said Act.
8. When the application came for hearing, the applicant told the court that he is not challenging the conviction. He was asking the court to reduce his sentence considering that he had reformed and has been properly rehabilitated. He produced certificates which he said were showing some processes and trainings he has undergone.
9. I have read through the affidavits in this matter and considered oral submissions made before me on 4-06-2024. At paragraph 4 of the supporting affidavit the applicant states;

‘That having been dissatisfied by the decision reached thereon, I appealed in HCCRA/89/2020 which was dismissed.’
10. The decision referred to in the above paragraph is the conviction and sentence in the lower court as it can be ascertained from paragraph 2 of the same affidavit. I reckon that that appeal the applicant refers to was against both conviction and sentence. In his own words, the appeal was dismissed by a Judge of the High Court. The applicant states further in his supporting affidavit that he is not willing to appeal to the Court of Appeal.
11. Article 165(6) of the *Constitution* prohibits the High Court from supervising superior courts. The applicant is making an attempt to have this court revise a decision made by a court of concurrent jurisdiction which I decline. The application is hereby dismissed.

DATED SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY 2024.

B.M. MUSYOKI

JUDGE OF THE HIGH COURT.

