



**MG v Republic (Criminal Petition E110 of 2023)
[2024] KEHC 9560 (KLR) (9 July 2024) (Ruling)**

Neutral citation: [2024] KEHC 9560 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT VOI
CRIMINAL PETITION E110 OF 2023
GMA DULU, J
JULY 9, 2024**

BETWEEN

MG APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Though this matter was filed in this court as a Constitutional Petition, it was infact an application for review of sentence.
2. I note that the applicant initially stated herein that there was discovery of new and compelling evidence, but when the Prosecuting Counsel objected, during mention date, the victim of the crime PM who was present in court, informed this court that the applicant who was her father had merely asked her to forgive him, and that was the reason.
3. Thereafter, the applicant and the Director of Public Prosecutions filed written submissions to the application, the applicant limiting his submissions to sentence only, wherein he sough to mitigate and asked for a lenient sentence. The Director of Public Prosecutions on his part, opposed the request for revision of sentence.
4. Having considered the request and the submissions on both sides. It is clear to me from the documents filed as well as submissions, that there is no discovery of new and compelling evidence herein, as defined in Article 50(6) (b) of the Constitution.
5. In any event, discovery of new and compelling evidence, would only be considered by this court in a proper constitutional petition, not an application for review of sentence like the present one.
6. Coming now to the request for review of sentence, it is clear that this was a case of incest wherein the applicant was the father of the complainant, a girl of 17 years



7. On conviction, he was sentenced to thirty (30) years imprisonment in Voi Magistrate's Criminal case (SO) No. 2 of 2017.
8. Thereafter, he appealed in Voi High Court Criminal Appeal No. E051 of 2021, and his appeal against both conviction and sentence was dismissed.
9. He has now come back to this same court through the present application, asking for review of sentence on the ground that he is a first offender, that he is a family man, and that his life has been greatly affected by the imprisonment, and that while in prison he has taken advantage of rehabilitation programmes, and annexed his trade test certificates to his submissions, as his evidence of this rehabilitation.
10. I note that under the provisions of Section 20 of the *Sexual Offences Act*, the maximum statutory sentence for incest with a girl below 18 years, is life imprisonment, and the applicant herein was sentenced to 30 years imprisonment, which means that he was a lucky man.
11. Again, his appeal on sentence having been substantively considered and dismissed by this court, in my view, this same court cannot review its own substantive decision.
12. In my view, the only avenue available to the applicant is either to appeal to the Court of Appeal, or to await until his prison sentence is less than three (3) years, and apply to this court for review of sentence under the general prison decongestion Community service Order programme.
13. Otherwise, I find no merits in this present application for review of sentence, which is hereby dismissed.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JULY 2024 IN OPEN COURT AT VOI.

GEORGE DULU

JUDGE

In the presence of:-

Alfred/Trizah – Court Assistants

Applicant

Mr. Sirima for State

