



REPUBLIC OF KENYA



KENYA LAW
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**Kilonzo v Republic (Criminal Revision E134 of 2022)
[2023] KEHC 1014 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEHC 1014 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MAKUENI
CRIMINAL REVISION E134 OF 2022
GMA DULU, J
FEBRUARY 16, 2023**

BETWEEN

NICHODEMUS MUSYOKI KILONZO APPLICANT

AND

REPUBLIC RESPONDENT

RULING

1. Before me is a Chamber Summons filed on 13th June 2022 under several Articles of *the Constitution* of Kenya 2010.
2. The application has the following prayers:-
 1. That the applicant humbly prays that this court implement the factors laid out in *Philip Maingi & 5 Others -vs- Republic* – Petition No. 17 of 2021 Machakos High Court.
 2. That the court takes into account any clemency factors beforehand and hands the petitioner (sic) appropriate reprieve.
 3. That the court applies the principles put down by the Supreme Court concerning a first offender.
 4. That constitutionality of mandatory minimum sentence raises a question of law under SOA as mandatory nature deprives court of legitimate jurisdiction to exercise its discretion not conforming to tenets of trial under Article 25(c) – *Christopher Ochieng -vs- Republic* (2018) Ap. No. 312/018 Evans Wanjala Wanyonyi at Eldoret.
3. The application was filed with an affidavit thumb printed by the applicant Nichodemus Musyoki Kilonzo, but which is not dated.



4. In the affidavit, it is deponed that the applicant was on 03/12/2012 convicted for defilement and sentenced to serve 20 years imprisonment, and that recently a decision had been made in Machakos High Court Case of *Philip Maingi & 5 Others -vs- Republic* (2020) based on which the applicant was now asking this court to review the minimum sentence imposed on him. He cites Article 27(1), and 47(1), (2) and (4) of *the Constitution*.
5. 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. The applicant has in his submissions, cited a number of cases including the case of *Francis Karioko Muruatetu & Another -vs- Republic* (2017) eKLR and the case of *Philip Maingi & 5 Others -vs- R Machakos High Court Petition No. 16 of 2020*.
6. The applicant has also filed three certificates on artisan skills he acquired while in prison.
7. This is a criminal matter wherein the applicant had previously filed Machakos High Court Criminal Appeal No. 183 of 2012, which was determined by the High Court in a judgment delivered on 18th March 2015 wherein the High Court dismissed his appeal and upheld both his conviction and sentence.
8. The applicant not having made any attempt to appeal to the Court of Appeal has instead now come to this court for revision on sentence.
9. In my view, though the applicant has relied on the Muruatetu case that case does not apply herein as the Supreme Court has clarified in directions issued that the said decision applies only to mandatory death sentences in criminal matters. The present case is a case of sexual offences only with minimum prison sentence.
10. With regard to the case of Philip Maingi, that decision is merely of persuasive authority of this court. This court is not bound by that decision, though it certainly respects that decision.
11. Having considered the matter, I find that in the present application, the applicant has not shown or demonstrated any mitigating factors in relation to the crime he committed, that would persuade this court or any other reasonable court for that matter, to review or vary the sentence imposed on him, which was also upheld by the High Court on appeal.
12. I thus find no merits in the application for review of sentence. I dismiss the applicant's application herein.

DELIVERED, SIGNED & DATED THIS 16TH DAY OF FEBRUARY 2023, IN OPEN COURT AT MAKUENI.

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GEORGE DULU

JUDGE

